(37,487)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 790

CONCORDIA FIRE INSURANCE COMPANY,
APPELLANT,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

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[fols. 1-3] [Caption omitted]

[fol. 4]

IN CIRCUIT COURT OF COOK COUNTY

No. B-171,526

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

THE CONCORDIA FIRE INSURANCE COMPANY OF MILWAUKEE, WISCONSIN

Debt

DECLARATION—Filed Nov. 8, 1928

The People of the State of Illinois, by Robert E. Crowe, State's Attorney, complain of The Concordia Fire Insurance Company of Milwaukee, Wisconsin, defendant, of a plea that the said defendant render to the plaintiffs the sum of $30,140.61, which said defendant owes to and unjustly detains from the plaintiffs; for that the defendant heretofore, to-wit, on, etc., was and still is indebted to the plaintiffs in the sum of $30,140.61 for and on account of general taxes levied and extended against the defendant, and upon the assessment of its personal property in and for the years A. D. 1870 to A. D. 1927, both inclusive, —, which said taxes became and are unpaid and are delinquent. And the plaintiffs aver as follows:

First. That during each of the years ending April 30th, in the years A. D. 1870 to A. D. 1927, both inclusive, the defendant was an insurance company incorporated by the authority of a state or government other than the State of Illinois, to-wit, by the State of Wisconsin, and as such was doing business in the County of Cook and State of Illinois, in pursuance and by the authority of the Act entitled "An Act to incorporate and govern fire, marine and inland navigation insurance companies doing business in the State of Illinois", in force March 11, 1869, and July 1, 1869, as amended by subsequent acts.

Second. That for the purpose of carrying on said business in said County of Cook, said defendant during said respective years established and maintained agencies in the Town of South Chicago, in the City of Chicago, and other taxing districts in said Cook County, and such agencies, through the agents of the defendant conducting the [fol. 5] business of the defendant at said agencies, during each of said years acquired on behalf of the defendant net receipts from the business so conducted, the amounts of which net receipts it became and was the duty of the said agents to return to the proper officer authorized and required by law to receive returns of such net receipts and which net receipts were required to be entered upon the tax lists of said County, Town and City, and be subject to the same rate of taxation for all purposes that other personal property was subject to in said town, City and County.

Third. That the said net receipts for said respective years, were assessed for said respective years by the proper assessing tribunals in said Cook County and in the manner and form required by law, and the County Clerk of said Cook County extended against said assessments taxes amounting to the following sums, respectively:

Against the assessment for the year ending April 30, 1923	5,853 40
Against the assessment for the year ending April 30, 1924	7,019 48
Against the assessment for the year ending April 30, 1925	5,059 58
Against the assessment for the year ending April 30, 1926	6,312 96
Against the assessment for the year ending April 30, 1927	5,805 19

Fourth. That said County Clerk returned the Collector's Warrants for said years for the collection of the taxes for said years to the proper collector as required by law; that said taxes became and are and were returned unpaid and delinquent, and that they are the same taxes herein alleged to be due and owing to the plaintiffs from the defendant. The institution of this suit has been duly authorized by the County Board of Cook County, Illinois.

[fols. 6-18] Fifth. That during said years A. D. 1923 to 1927, inclusive, other assessments of net receipts of the defendant were attempted to be made by the assessing tribunals of said Cook County, and taxes were attempted to be extended against the same, but each and every of said other attempted assessments and the attempted extensions of taxes against the same were and are null and void and uncollectible, and all taxes extended against the net receipts of the defendants for each of the years A. D. 1870 to 1922 inclusive, and not appearing upon the tax books of said county to have been heretofore paid, were illegally extended and were and are null and void.

Wherefore, and by force of the statute in such case made and provided, an action hath accrued to the plaintiffs to have and demand from the defendant the said sum of $30,140.61, yet the defendant, though often requested, hath not paid the said sum of money, nor any part thereof, but fails and refuses so to do, in the damage of the plaintiffs in the sum of $35,000.00; wherefore plaintiffs bring this suit.

(Signed) Robert E. Crowe, State's Attorney. Samuel A. Ettelson, Leon Hornstein, Clair E. More, Louis H. German, Harris F. Williams, Hiram T. Gilbert, of counsel.

[fols. 19–21] In Circuit Court of Cook County

[Title omitted]

Order Withdrawing Demurrer to Pleas—Nov. 21, 1930

This day comes the plaintiff, by John A. Swanson, State's Attorney, and comes the defendant, by Silber, Isaacs, Silber & Woley, its attorneys, and thereupon by agreement of counsel, it is ordered that the demurrer of the plaintiff to the special pleas of the defendant be and the same is hereby withdrawn, and it is stipulated that the defendant shall be at liberty to offer, upon any trial of the above entitled cause under the plea of general issue, any evidence and establish any defense which it might have introduced, offered or established under any form of pleading.

Enter.

Stanley Klarkowski, Judge.

O. K.

John A. Swanson, Hiram T. Gilbert, for Plaintiffs.

[fol. 22] IN CIRCUIT COURT OF COOK COUNTY

No. B 171,526

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

THE CONCORDIA FIRE INSURANCE COMPANY OF MILWAUKEE, WISCONSIN

Debt

FINDING AND JUDGMENT—March 21, 1932

This day come the parties to the above entitled cause and by agreement of the parties a trial by jury in said cause is hereby waived and said cause is submitted to the court for trial without a jury. Thereupon the court having heard the evidence and the arguments of counsel and being now fully advised in the premises, the court finds the issues in favor of the defendant and that the defendant is not indebted to the plaintiffs on account of the taxes set forth in the declaration as therein alleged. Whereupon the plaintiffs moved the court to set aside said finding and grant the plaintiffs a new trial in said cause, which motion the court overruled. It is therefore considered by the court that judgment be entered in said cause in favor of the defendant and that the plaintiffs take nothing by their suit.

[fols. 23–23-5] Thereupon the plaintiffs prayed an appeal from said judgment to the Supreme Court of Illinois, which appeal is allowed, and on motion of plaintiffs thirty days is allowed them in which to file a Bill of Exceptions herein.

H. Sterling Pomeroy, Judge.

March 21, 1932.

O. K. as to form.

John A. Swanson, Louis H. Guinan, Hiram T. Gilbert, for Plaintiffs. Silber, Isaacs, Silber & Woley, for Defendant.

[fol. 23-6] IN CIRCUIT COURT OF COOK COUNTY

Abstract of Bill of Exceptions—Filed March 21, 1932

The Court: Which case are you trying?

Mr. Gilbert: Trying all of them.

Mr. Silber: Judge, it is omnibus.

OPENING STATEMENT FOR PLAINTIFFS

This, after setting forth that suits are brought to recover net receipts taxes under Section 30 of the Act of 1869,

gives a history of the litigation under that section commencing with People v. Kent, 300 Ill. 344, and ending with People v. Franklin National Fire Ins. Co., 343 Ill. 336.

In 1924, about the time the Hanover Fire Insurance Company case was brought in the Superior Court of Cook County, an original petition for mandamus was filed in the name of The People of the State of Illinois v. Eugene E. Fayart, et al., in the Supreme Court, the purpose of which, or at least the main purpose, was to secure from the Supreme Court a decision as to how the amount of net receipts was to be ascertained; that is, what deductions on account of expense could properly be made from gross receipts in [fol. 23-7] arriving at the amount of net receipts. The defendants, who were the agents of a foreign fire insurance company, answered the petition, and, among other things, alleged that Section 30 of the Act of 1869 was in violation of the Fourteenth Amendment. That case was heard in the Supreme Court and taken under advisement and remained under advisement until the close of the December Term, 1928.

In the meantime, the two hundred eight actions at law had been brought and negotiations had been entered into between the taxing bodies and the insurance companies for settlements. About December 15, 1928, the attorneys for the respective parties had substantially agreed upon a settlement, subject to the approval of the insurance companies and the taxing bodies. On December 20, however, much to the surprise of all parties concerned, the Supreme Court, in the Fayart case, that is, the mandamus case, handed down a unanimous opinion holding that Section 30 of the Act of 1869 was in violation of the Fourteenth Amendment. It thus overruled its prior decision in the Harding case, 327 Ill. 590.

Upon the filing of the opinion of the Supreme Court in the Fayart case, a petition for a rehearing on behalf of The People of the State of Illinois was filed in which the decision of the court was reviewed at great length. The result was that the Supreme Court regarded the petition for a rehearing as being in violation of the rehearing rule, and for that reason struck it from the files, but immediately after doing so proceeded to grant a rehearing of its own motion. Thereupon the petitioners, The People of the State of Illinois, concluded it would be advisable to dismiss their pe-

[fol. 23-8] tition and made a motion for that purpose, which the court allowed.

Immediately after the dismissal of the petition in the Fayart case, the attorneys for The People of the State of Illinois and those for the insurance companies resumed their negotiations for a settlement. The result of these negotiations was that one hundred ninety of the companies settled their liabilities on the basis of approximately fifty per cent of the total taxes extended against them respectively for the years in question. At the time this settlement was made there was uncertainty as to what would be the ruling of the Supreme Court as to the constitutionality of Section 30 of the Act of 1869 in case the question again came before the court. That uncertainty was the reason for the acquiescence by the taxing bodies in the settlements which were made.

Now, to explain that, the Harding case, in which they finally sustained the constitutionality of the law, in 327 Ill., was a decision by four against three, three of the judges holding the law was unconstitutional. Among the four was Judge Duncan, who in the Fayart case, wrote a forty-page opinion holding that net receipts meant net profits. And so there were three judges in favor of sustaining the law in its entirety, three against it, and Judge Duncan sort of in between, and that was the reason for our dismissing that case and seeking to present the matter in another suit. There was another reason. The Supreme Court of Illinois has some peculiar rules, and one is that upon the granting of a petition for rehearing, the petition stands as the argument for the petitioner, then the other side have a right to file an answer, and the petitioner has a right to reply. [fol. 23-9] Now, the court had decided against the law on points which were not argued at all on either side, and we hadn't any right to file anything, and the other side hadn't any right to file anything, and we did not care to submit the case on the old arguments. That was, I thought, a very good reason for getting out of the court and going at it in a different way.

Opening Statement for Defendant

This sets forth the following claims of the defendant:

During each of the years, 1923 to 1927, inclusive, there had been a return under oath filed by each of the com-

panies with the Board of Assessors and there had been an assessment of the net receipts disclosed by the returns, and these assessments and the taxes were of record as liabilities of the companies. None of these taxes had been paid for. In some of the years 1923 to 1927 there had been two assessments against each company. There had been one by the Board of Assessors and there had been a review by the Board of Review. There had been 50 per cent penalty added by the Board of Review, so that in some years there were three tax assessments pending against the companies on exactly the same property.

In 1927 the Board of Review had notified the companies to appear and they did appear and the Board said the only thing they desired to discuss at that time was the assessments they were to make for 1927, that they were not going to consider the net receipts for 1923 to 1926 until the decision upon the petition for a rehearing then pending and they would let them know when they wanted them again, and they never let them know. The companies knew noth- [fol. 23-10] ing about the assessments until they were sued in 1928. No opportunity was given them to be heard for the five years on so-called omitted net receipts.

The defendants claimed first that the Board of Review had no power in 1928 to make the omitted property assessments when there had already been sworn returns filed and assessments made; second, that the Board had no right to make the assessments without giving the companies an opportunity to be heard, and, third, that the Board had no right to make the assessments upon the work which had been done by a man named Seely, a tax ferret who had a contract for a contingent fee to be collected out of the very taxes he was assisting the Board of Review to assess.

In making the assessments in 1928 the Board of Review did not take 60 per cent or 50 per cent of the full value, but they took 100 per cent of the amount they estimated the net receipts to be upon Seeley's figures and they applied the tax rate against the full 100 per cent.

The court cannot decide how much was actually due for taxation. The taxes are either valid or invalid.

Section 30 of the Act of 1869 is unconstitutional because it provides for taxing the net receipts of foreign fire insurance companies without any law authorizing the taxing of domestic companies, casualty companies, and other com-

panies, on their net receipts from similar business and because domestic companies are permitted to deduct their losses upon their policies and every expense while foreign fire insurance companies are denied the right to deduct their losses and for other reasons to be hereafter given, if necessary.

[fol. 23-11] EVIDENCE FOR PLAINTIFFS

OFFERS IN EVIDENCE

Plaintiffs introduced in evidence five books numbered 143, 144, 145, 146 and 170 proven to constitute a part of the records of the office of the County Clerk of Cook County, Illinois, relating to the assessment of omitted net receipts of foreign fire, marine and inland navigation insurance companies for the years 1923 to 1926, inclusive, and net receipts for the year 1927, together with portions of certain pages containing the assessments of the omitted net receipts of the defendant, the Concordia Fire Insurance Company, for the years 1923 to 1926, inclusive, and its net receipts for the year 1927, and the extensions of taxes thereon, with the collector's warrants and collector's returns for those years showing that the taxes against the company for said years were returned uncollected, and also a condensed statement received by agreement in place of the entries in the books, showing the taxes excluded the total amounts of which were as follows:

State tax	$2,194.90
County tax	2,571.08
Forest preserve tax	497.15
Sanitary District tax	1,923.34
City tax, City of Chicago	10,247.25
School tax	10,195.97
South Park tax	2,492.24
Town tax	0.44
West Park tax	12.03
Old Portage tax	5.54
Norwood Park tax	0.67
Total	$30,146.61

[fol. 23-12] Said condensed statement is as follows:

(Here follows statement, side folio 23-12)

The Concordia Fire Insurance Company of Milwaukee, Wis.

Book, pg., line	Taxing district	Year	Total tax for year	State tax	County tax	Forest preserve tax	Sanitary District Tax	City taxes of city of Chicago	School taxes	South Park tax	Town tax	West Park tax	Old Portage Park tax	Norwood Park tax	Estimate or taxable net receipts of A. D. 2/m, by Board of Review, dollars
143, 6-13	South Chicago	1923	$5,853.40	$370.00	$473.60	$111.00	$303.40	$2,116.40	$2,057.20	$421.80	....	....	....	....	$74,000
144, 29-14	South Chicago	1924	7,019.48	543.18	484.68	108.64	384.40	2,389.96	2,532.02	576.60	....	....	....	....	83,565
145, 31-18	South Chicago	1925	4,980.25	467.76	440.74	77.05	302.67	1,639.90	1,672.92	379.71	....	....	....	....	58,030
145, 14-2	Jefferson	1925	51.56	4.81	4.52	0.80	3.11	16.84	17.18	.....	....	....	4.30	....	565
145, 23-3	Norwood Park	1925	14.90	1.49	1.40	0.25	0.97	5.22	5.32	.....	0.25	....	....	....	175
145, 39-6	West Chicago	1925	12.87	1.19	1.12	0.20	0.77	4.18	4.26	.....	....	1.15	....	....	140
146, 31-17.	South Chicago	1926	6,149.98	430.30	602.42	99.30	430.30	2,038.96	2,005.86	542.84	....	....	....	....	66,200
146, 13-3	Jefferson	1926	16.94	1.21	1.69	0.28	1.21	5.70	5.61	.....	....	....	1.24	....	185
146, 25-2	Norwood Park	1926	12.32	0.88	1.23	0.21	0.88	4.16	4.10	.....	0.19	....	....	0.67	135
146, 39-5	West Chicago	1926	132.72	9.43	13.30	2.18	9.43	44.66	43.94	.....	....	10.88	....	....	1,450
170, 2-20	South Chicago	1927	5,895.19	364.65	546.98	97.24	486.20	1,981.27	1,847.56	571.29	....	....	....	....	121,550
	Total		$30,140.61	$2,194.90	$2,571.08	$487.15	$1,923.34	$10,247.25	$10,195.97	$2,492.24	0.44	12.03	5.54	0.67	

Plaintiff rests.

[fol. 23-13] Objection by defendant and motion to find for defendant the objection not to the summary and not to the process of shortening the proof that is offered, but on the ground that the books from which these entries are made are not books required to be kept by the county clerk or county collector, but are books made up especially for this particular assessment and to show these particular facts and that the evidence therefore is not competent.

Motion denied.

EVIDENCE FOR DEFENDANT.

CHARLES KRUTCKOFF, called for defendant, testified as follows:

Direct examination:

I reside at 5000 East End avenue, Chicago, Illinois. Have resided in Chicago all my life. At present am a member of the State Tax Commission. From 1915 to 1927 I was a member of the Cook County Board of Assessors. I was chairman of the Board in 1926 and 1927. While I was a member of the Board it received returns under oath from various foreign stock fire insurance companies in most all cases, and the Board of Assessors annually made assessments of their net receipts upon the basis of their returns.

During that time there was a custom to take around 60 per cent of full value in making assessments of property.

In other words, to illustrate: If I had a piece of property, real estate, worth $100,000 on the market the As-[fol. 23-14] sessor, in fixing the market value of that would assume that it was worth $60,000 or $70,000 and no more. Then they would apply the assessed valuation statute, whatever it might be, 50 per cent or 33 per cent given to that value. Then the tax rate would be applied to that final assessed value. The same rule applied to personal property, whether it was tangible or intangible. That was done to secure constitutional uniformity of taxation as near as possible. The Supreme Court of Illinois sustained the 60 per cent basis.

In the case of insurance companies we accepted their returns as they returned them deducting their expenses, as shown on their returns. We took 60 per cent of the amount returned by the insurance company, then took one-half of

the 60 per cent, which really made 30 per cent of the amount of their return, which was assessed.

Cross-examination:

This ratio of the debasement varied from time to time. They tried to come as near as possible to 60 per cent or 70 per cent. In some years it was as low as 50 per cent. It was never more than 70 per cent. The debasement started in 1899. I was then an employee of the Board of Assessors. I was chief clerk for 15 or 20 years.

Redirect examination:

During the period from 1899 until now the general custom we have been talking about prevailed:

[fol. 23-15] HERMAN B. SEELY, called for defendant, testified as follows:

Direct examination:

My name is Herman B. Seely. Reside at 718 East 89th place, Chicago. Have lived in Chicago since 1885. For a long time I practiced architecture. From 1920 to 1930 I was connected with this insurance litigation. In 1916 or 1917 I was investigating for Rufus M. Potts, Insurance Superintendent. He wanted to know what the losses were for four or five years.

Ralph R. Bradley obtained a contract from the City of Chicago and I had an interest in it. It was a contingent contract. That contract provided for a contingent fee of 30 per cent on net receipts up to 1918 and after that 15 per cent. I had a one-third interest in that. Bradley had a contract with the South Park Board which they refused to recognize because it was champertous.

There was a contract obtained by Bulkley, More & Tallmadge from the county that I did not know of until 1928. I claimed an interest in it which was finally recognized. I had no interest in any matters under the Chicago contract after 1922. I was then employed by the City of Chicago at $200 a month. I was employed to gather information for use by the Board of Review in making these assessments of

net receipts. I was working on the assessments that were being made by the Board of Review on net receipts. I knew the Board of Assessors and the Board of Review were actually making assessments in each of the years 1923 to 1927.

[fol. 23-16] After the Board of Assessors entered on the books the full amount of the net receipts as returned to them by the companies for net receipts and in cases where no return was made, they made an estimate with penalty. In 1924 they made two assessments. One of them was the net receipts entered in the book which set up that they were net receipts and they took the returns that were made to them by the companies and entered the full amounts. In the other they entered the same amount under the heading "Credits." Whatever name they gave it they were actually assessing the same net receipts.

In 1925 and 1926 they made only the assessments on the separate books as I recall it, i. e., on the returns of the company. They made no entries in the regular books.

1925 and 1926 were done that way. There was a special book gotten up for these years. I think it was called net receipts of foreign insurance companies. It contained only the returns of the net receipts that they had made.

In 1927 there were two assessments. There was an assessment of net receipts made by the Board of Review in a separate book in accordance with the final decision in the Hanover case. Then there was an assessment under the heading "credits" in the regular book, i. e., the personal property book.

I raised the question with Mr. Barrett and he had the book brought in. I protested against his making an assessment of that kind. He had the book brought in to him, examined it, and he said there was no net receipt in here, [fol. 23-17] this was credits and he ordered the assessment then to be confirmed as made by the Assessors in that book. That is what happened.

Every year from 1923 to 1927, before the final omitted net receipts assessment was made for the five years in 1928, there was at least one and in some years two assessments against net receipts of each of these companies.

The two assessments on 1927 were current and not omitted net receipts.

I prepared the figures for the omitted receipts assessments that were made in 1928 for the five years. I made up slips for them. I have the figures right here.

I received $12,000 from the Bradley contract and $4,000 from the other contract.

If the money is collected in these cases I will get some out of the County, but none from the City.

I had no right or interest in the Bradley contract beyond 1922 until the settlement was made.

The fund from which I got this compensation was a fund produced by settlement with a number of companies. That included the taxes for the years 1923-1927. That waived any payment at all upon back taxes from 1869 to 1923. That is the reason I got the settlement from Bradley.

During this period from 1922 to 1928 when I was working for the City of Chicago I would work in the Board of Review on that particular thing. They would accept what I would decide ought to be done. That is the Board of Review did.

At the hearing before the Board of Review in December, 1927, it was stated on our side that we had estimated that [fol. 23-18] the gross returns made by the companies on their own forms were equivalent to 75 per cent of what would be shown if they had put them on Form 16. That was our contention.

The Board of Review adopted that and directed that the gross receipts should be used as the basis, so that these figures in this National are all taken from the returns that you made, using the gross receipts and not the net receipts and then the Board of Review had decided that they would allow only 30 per cent deduction for expenses because they limited that merely to the commissions of the agents and the local taxes paid and that was taken as equivalent to 30 per cent for Class 1 agents, averaging all business, and 25 per cent for the outlying agents. On that basis it was made up. We took your return of gross receipts as you made them and took from it 30 per cent in the case of your Class 1 agent, and that was the great bulk of it. Many of them showed only Class 1 agencies. Where they showed outlying ones we took off 25 per cent for expenses and where they showed outlying towns that was not put into the asses-ment at all, because no assessments were made for the outlying towns.

The member of the Board of Review I took this matter up with was Mr. Barrett. He had that matter in charge. They turned this matter over to Mr. Barrett. Mr. Barrett was one member of the three members I have said I reported to what I thought was the right basis and he adopted it. That basis of allowance for the amount of expenses to be deducted had been adopted during the prior years.

Of the figures that I got up they were taken from the annual statement of all business done in Illinois as filed by [fol. 23-19] the companies with the Insurance Department at Springfield only in a case where there was no return made by the company at all or where we could not find any trace of any return having been made that we could use. We took the gross receipts as they returned them and allowed them thirty per cent for expenses on the great bulk of the assessment. We didn't pay any attention really to the amount of expenses that they deducted in determining their net receipts as returned by them under oath because there was this difference. The Board of Review under the writ in the Barrett case could not take into account the overhead expenses. They were limited to the expenses shown on the face of Form No. 16. There was an order to the Tax Commission in effect.

That was their interpretation of what they had to do under the writ, and that was enforced also by the Tax Commission. That was the interpretation of the attorney for the Board, Massena.

If the companies returned $150,000 premium receipts and showed against that $60,000 of actual expenses of their agency including the expenses, overhead, etc.; and left $90,000 of the net receipts to be assessed I took thirty per cent off of that $150,000.

We took those gross receipts and we took off thirty per cent for expenses. We took off nothing for equalization. The balance was what we construed to be the net receipts. There were no estimates made unless we were compelled to by the absence of a return. There were very few cases where they had not made any returns. I had them in the shape of copies I have made. I had access to the originals. [fol. 23-20] I made every endeavor I could to get the returns as actually made of the gross receipts. As to 1923 we had no record of the gross receipts. The companies had

refused to make returns to the Board of Review. They made their returns to the Board of Assessors on personal property blanks. In making 1923 we did use the State returns. When we found what was made up in 1924, not having the gross receipts in any form for 1923, I would compare the total business for the year on which 1924 was based with that of 1923. If there was less in 1923 than 1924 I used the 1924 assessment and took off say ten per cent whatever it showed or fifteen. If there was more it was added. But it was there based on the State returns.

I was not in the actual employ of the Board of Assessors or the Board of Review during any of this period.

I do not recognize these working slips for 1923. I never worked with them. They would show what assessment was made by the Assessor, but because they did not show gross receipts I could not use them. I don't know who made those up, except that I knew the custom in the Board of Review to go through the books and make slips like that.

When I estimated in the absence of a return I had to use the annual statement made by the companies under the law to the insurance department of all the business in Illinois, and then I had to more or less guess at what amount of that total of business was in Cook County. It showed all the business of the State of Illinois.

[fol. 23-21] Cross-examination:

I was to get one-third of the Bradley contingent fee for the years prior to 1923 and did not have any contract that I know of for the years 1923-1927, but Bradley gave me $12,000 in consideration of the fact that I had rendered service previously and the fact that I had a claim because when the settlement was made, and all of my interests were wiped out, I was entitled to consideration.

In 1920 the Tax Commission issued a form to be used by the companies in making their returns of net receipts for this tax and it was called Tax Commission Form 16. That was the form that the Tax Commission required all these companies to make their returns on and it was also required by the writ handed down. They refused to make their returns on that form. They took the position before the Board of Review that they were not obliged to make any return on Form 16 and that the Board could do nothing except to accept the return.

ALMA N. RASMUSSEN, called for defendant, testified as follows:

Direct examination:

My name is Alma N. Rasmussen. I live at 6116 Kenwood avenue, Chicago. During 1925, '26, and '27 I was in charge of the Accounting Dept. of Brummel Bros., Cook County manager for the Albany Insurance Co., Eureka Security Fire & Marine Insurance Co., Globe Insurance Co., Reliable Fire Insurance Co. of Dayton, Security Fire Insurance [fol. 23-22] Company of Davenport, Iowa, and the United American Insurance Company.

I personally prepared for them for the years 1925, 1926, and 1927 for each of the six companies and filed them with the Board of Assessors.

The Albany Company for the year 1925 reported and filed net receipts $33,299.02, for 1926 net receipts $32,288.58, for 1927 net receipts $27,559.26. The Eureka Security Co. for the year 1925 filed net receipts $7,387.95, for the year 1926 $18,023.09, for 1927 $25,023.12. The Globe Insurance Company for the year 1925 filed net receipts $34,558.74, for 1926 net receipts $33,442.12, for 1927 net receipts $35,844.84. The Reliable Ins. Co. for the year 1925 filed net receipts $26,108.61, for the year 1926 net receipts $25,246.29, for the year 1927 net receipts $27,897.83. The Security Fire Ins. Co. of Davenport for the year 1925 filed net receipts $33,698.07, for the year 1926 net receipts $36,587.37, for the year 1927 net receipts $39,216.28. The United American Ins. Co. for the year 1925 filed net receipts $19,656.98, for the year 1926 net receipts $19,347.66, for the year 1927 net receipts $19,895.89.

I took receipts for those returns from Mr. Paul Wiedel, Chief Clerk of the Board of Assessors. These are photostatic copies of those receipts, for the year 1927 the receipt was signed by John Hora. I took a receipt each year for each of the six companies filed.

In 1925 Brummel Bros. were Cook County agents for The National Ben Franklin Insurance Co. I made a return for that company as shown by receipt of May 28, 1925, showing net receipts of $39,709.86.

[fol. 23-23] During the year- 1925, '26, and '27 these insurance companies had only net receipts and no other prop-

erty in Cook County. The assessment was therefore only on the net receipts.

Cross-examination:

In making our return of net receipts, we put on our return the gross receipts and total expenses. We did not itemize the expenses. Our returns did not show what the expenses included. That could be ascertained only by reference to the books of Brummel Bros.; they showed all expenses. We had no receipts except premiums. When the Board of Review got our returns all they had was our statement of receipts and expenses substantiated by the books of the company. We received the blanks from the county to make return on Form 16.

Henry Schaefer, called by defendant, testified as follows:

Direct examination:

My name is Henry Schaefer. I live at 321 N. Menard avenue. At present my business is soliciting fire insurance. I was with Brummel Bros. during 1923 and 1924.

I took part in preparing and filing net receipts for the six named insurance companies. The Albany Insurance Company for the year 1923 filed net receipts of $53,946.54, for the year 1924 net receipts of $57,116.39. The Eureka Security Company were not represented in those years by Brummel Bros. The Globe Insurance Company for the year 1923 filed net receipts $59,617.44, for the year 1924 [fol. 23-24] net receipts $63,041.76. The Reliable Ins. Co. for the year 1923 filed net receipts $37,561.47, for the year 1924 filed net receipts $43,540.65. The Security Co. of Davenport for the year 1923 filed net receipts $47,035.64, for the year 1924 net receipts $54,995.88. The United American Ins. Co. for the year 1924 filed net receipts $17,434.11. Brummel Bros. did not represent them in 1923. These returns were filed by me for those years and for those companies with the Board of Assessors. Later we got back bills for those years. They were not paid and they are still unpaid. These companies had no other property except the net receipts shown during those periods.

Cross-examination:

I never heard of Form 16. I never got a copy of it.

The Witness: I made up my statement of net receipts from the total premiums on fire insurance. I included nothing else. They simply wrote fire insurance. My return did not show the kind of insurance, nor what the items of expense were.

My statement simply showed so much gross and so much net. The returns were sworn to for each company. We wrote mostly fire insurance and some automobile insurance and we only included fire insurance premiums in the gross receipts. I don't recall that we wrote any insurance besides fire and automobile.

[fols. 23-25] W. H. ROADIFER, called for defendants, testified as follows:

Direct examination:

I reside at 7540 East End avenue, Chicago, and am comptroller of the National Fire Insurance Company of Hartford and all of the other companies included in that fleet, including the Mechanics and Traders, the Transcontinental and the Franklin National. I have been with the National Fire Insurance Company of Hartford for forty years. I had charge of the filing of returns of net receipts for Cook County and prepared and filed during each of the years from 1923 to 1927, inclusive, for the National Fire Insurance Company of Hartford and for the Mechanics and Traders Insurance Company, reports of net receipts under oath with the Board of Assessors. The returns of the net receipts for the National Fire Insurance Company of Hartford were as follows: 1923, $354,950; 1924, $340,759; 1925, $340,203; 1926, $378,489; 1927, $378,782. For the Mechanics and Traders Insurance Company of New Orleans the returns were, for 1923, $14,473; 1924, $40,988; 1925, $47,640; 1926, $72,043; 1927 $46,241. These returns were all made under oath and were all filed with the Board of Assessors of Cook County in those respective years.

The National Fire Insurance Company also had some physical personal property in Cook County upon which a separate return was made and upon which a tax has been paid. Outside of the physical personal property and the net receipts the company had no other property of any kind in Cook County at that time.

[fols. 23-26] Cross-examination:

In my returns of gross receipts I included fire, marine and inland navigation and by fire we included fire underwritten coverage. No other receipts were included.

Edward R. Litsinger, called for defendant, testified as follows:

Direct examination:

I am an attorney-at-law and a member of the Board of Review of Cook County and have been since January 1, 1917. During that period I have been chairman of the Board part of the time. Some time between the years 1923 to 1928 there was a proceeding pending before the Board with reference to taxing on omitted premium receipts—I can't remember the exact dates. In a general way, all I can say about the matter is that it was a long controversy relating to the assessments against property or receipts of non-resident fire insurance companies, which led to mandamus suits, and I think it went to the Supreme Court. I don't know but what it even went to the United States Supreme Court, on the question, as I recall, whether foreign insurance companies, fire insurance companies, would have to pay based on their net premium receipts. We understood that the Supreme Court finally settled the question and then the matter of assessing the insurance companies for back years came up and on those matters there were hearings as to the form, as to the manner of arriving at the net receipts, and so forth.

[fol. 23-27] I knew that complaints had been filed against insurance companies, and I knew that Mr. Seeley was connected in some respects with the Corporation Counsel's office, in whatever way it was I don't know, but I under-

stood that Mr. Seeley had prepared a schedule of figures in connection with the premium receipts, and then it is the practice of the Board of Review, on a complaint being submitted, to notify the insurance companies or property owners, or whoever should be assessed, that a complaint had been filed and giving a five days' notice of the filing of that complaint to be set for hearing. Then the matter comes up for hearing.

When these matters came up for hearing on the complaints Mr. Seeley was a witness and had furnished information, and as a defense to those complaints their attorneys appeared. I couldn't say that I knew at the time that these assessments were spread for the so-called omitted net receipts that Mr. Seeley, who prepared the figures and whose figures were adopted by the Board of Review, was working on a contingent fee basis for the collection of the very taxes that were spread. I don't know that I have any reason to believe that he was working on a contingent fee basis. I knew he came through the Corporation Counsel's office.

The only contact I had with this insurance tax matter was official and the official contact was that we heard all these matters, which took up a large amount of time of the Board of Review, on the questions of law first, and there were many very conflicting and involved legal questions involved. It went to the Supreme Court and afterwards to [fol. 23-28] the United States Supreme Court. It was so important that Chief Justice Hughes was one of the counsel in the case. It came back to the Board of Review on the finding of those courts and then it came up for the assessment, fixing of the assessment, and those various phases.

The law provides that all property, personal and real, should be taxed on its full fair cash market value; however, that was never done. It was regarded as kind of official that 60 per cent of the actual value should be taken as the assessed value to start with. The assessors and the Board of Review fixed a full, fair, cash, market value and then stopped. The law provided that property should not be taxed on its full, fair, cash, market value, and the assessors or the Board of Review were supposed to fix it, and that supposedly was 60 per cent, but the law provided that the taxes should be figured at a percentage of that.

The tax rate was applied. So, at one time it was applied to one-fifth, at another time it was changed to one-third, and then changed to one-half. That had to do with the bonding figure and had to do with the whole, so that the percentage on which the tax was levied by the assessors, had nothing to do with that and the Board of Review had nothing to do with that. All that they were interested in was the supposed full, fair, cash market value. When the order of reassessment came about the full selling value was ascertained in the following supposed scientific way: A lot would be measured off by its number of feet—one foot wide and so many feet deep, and a building was measured off into a square of cubical contents, and by that method called scientific, a building and a lot would be valued sup- [fol. 23-29] posedly at the fair market value. That system was adopted in 1928. Then the assessors, through the assistance of men who were supposed to be authorities, adopted a factor of 37 per cent, which was supposed to be the factor applying all over the state, and which was applied as follows: Property valued at $1,000, for instance, was debased to 37 per cent, and then 5 or 6 per cent taxes of 37 per cent were taken. This was the method of assessment used by the Tax Commission and it has been followed since 1928.

This system is supposed to make for uniformity, but whether it can make a legal value or not, nobody can tell. We may take, for example, a block of bungalows all built practically alike, and all costing $10,000 in 1925, and sold for that figure, and measure up so that the land, and the building would be worth $10,000. Then, in 1927 or 1928, the owner of one piece in the block wants to get rid of it and it is advertised for sale. The best bid that the owner receives is $5,000, which shows that the aforesaid scientific basis might be all right for a building down here where it might not be all right for bungalows out in the field.

I have always maintained that the small home, where there is no income and where you can't determine the value, should not be treated with the same precise rule of thumb or scientific method as the building that maintains its approximate full commercial value. I believe this is the cause of the situation that has created this desperate hardship. Take a man, for instance, who would buy a piece of

property, the general level of assessed value of which was [fol. 23-30] around from 25 to 30 per cent, and perhaps pay $10,000 for it. The real estate agent would tell him that the taxes would probably be on a basis of 2 per cent or less than that, or $200 per year. Knowing about the amount of tax, the returns and percentages, the purchaser figures that that amount is going to be the tax from year to year. When this so-called scientific method was applied, it took this property from 25 per cent of its full value to 37 per cent of its full value, and it raised him 25 per cent, 30 per cent, or in some cases 40 per cent. Naturally, this man felt this increase greatly, and the result was that he either couldn't pay or didn't want to pay; that is your outcome and your tax problem.

Cross-examination:

The tax against those 208 insurance companies before the Board is extended upon an assessment of their net receipts. Their net receipts are obtainable by extending the total amount of their gross premiums and deducting expenses. It wouldn't be possible for the Board of Review to go into a detailed examination of the receipts and expenses of 208 insurance companies. The Board has to take the best estimate it can.

Redirect examination:

I cannot tell you precisely whether or not each company filed a sworn return with the Board of Review each year and whether or not there is a record of an assessment each year on the returns that were submitted by each company, but I can tell you that the practice is and the custom is [fol. 23-31] that the assessors send their records to us and we take the records. If we have a record of an assessment against you of $5,000 and a complaint is made that you have one million instead of five thousand, we originate our own complaint and then we hear your matter, independently of the assessors' figures, and determine then as a new matter whether you should be assessed on $5,000 or $5,000,000.

Where the books show the letter "R" in connection with an assessment, it means on a return that might have been a sworn return or a signed return without being sworn;

and where the letter "E" appears that means if the company didn't file any return at all or make any record with the assessors, then the assessment is estimated against it. A sworn return may be incomplete, there may be omitted property, and in many cases there is. In many cases a sworn return is on a schedule of $50,000 of all personal property, and we don't know whether or not it is actual.

For illustration, if in 1923 an assessment was entered against net receipts of the A. B. Insurance Company of $100,000, and in 1928, five years later, on a complaint, or otherwise, a new assessment was made which was called "Omitted net receipts," although this was already assessed in 1923, I should say, depending upon a reported $100,000, and then under this ruling, the amount should have been $200,000. I think that if a new assessment was made for $200,000, it would abrogate the $100,000 assessment. I don't presume that the Board would have intended to make a double assessment on your people at all. If there was omitted proprty, we would assess the omitted [fol. 23-32] property. There isn't any time, no matter how long may have elapsed, when the Board can't call a revaluation of that class of property an assessment of omitted property. In other words, all it amounts to is a revaluation.

Recross-examination:

I believe that the Tax Commission in this state prescribed a form of return for the foreign fire insurance companies, or required them to make it—Form 16, I believe, although I am not sure. Here is a form that shows so much gross receipts and so much net receipts, but gives no information whatever as to how they arrive at the gross or the net. If we accepted this return as true, there wouldn't be any further investigation.

Redirect examination:

I couldn't tell you the degree of investigation that the Board gave Mr. Seeley's figures that they used as an estimate. The Board had no interest in Mr. Seeley; but it did have an interest in getting information that was accurate. The Board would give the insurance companies upon a complaint, the opportunity and privilege to submit any-

thing that they wanted. The insurance companies or any property owner is not foreclosed by anything that Mr. Seeley or anyone else would say.

[fol. 23-33] CHARLES V. BARRETT, called for defendant, testified as follows:

Direct examination:

I am an attorney at law and a member of the Board of Review, and was from 1923 to 1928, inclusive. I am now chairman of the Board and was chairman in 1919 and 1920 and then again around 1926.

During the years 1923 to 1927, inclusive, the matter of so-called omitted net receipts of certain foreign stock fire insurance companies came up before the Board and some complaints were filed by some of the municipalities.

Mr. Herman Seeley, I remember in a general way, gathered certain information with respect to an estimate on the net receipts of the foreign companies for those years and presented them to the Board of Review, which adopted those figures and spread them in 1928 as assessments for the years of 1923 to 1927, inclusive. I supposed that Mr. Seeley represented the City and some sort of a communication to that effect came from the Corporation Counsel's office; that is all I know concerning Mr. Seeley and the tax matter. I knew nothing about any contract he may have had for compensation.

My recollection is that in the years 1923 to 1927, inclusive, certain returns were made to the Board of Assessors by the insurance companies, and were spread as personal property assessments. There was a demand made by the Board of Review on these various companies who were to be assessed to file a return with us on Form 16, as required [fol. 23-34] by the State Tax Commission. There was a refusal of nearly all the companies to file a return on this particular form. In view of that attitude, we were furnished with the information necessary to take action or determine our course by the Corporation Counsel's office through Mr. Seeley and a couple of lawyers representing the City. My recollection is we then took this information, the best information we could get, and spread it on a

specially prepared warrant book which we called "An assessment on the net receipts," as this assessment was spread under a special statute. I think the opinion of the Board was at this time that this was not a personal property assessment such as an assessment against stocks and bonds, etc., but was an assessment under the insurance statute and that we should have a specially prepared warrant, which I think was prepared at that time.

The question came up at that time as to whether or not this was a double assessment, but my opinion was that it wasn't a personal property assessment but an assessment only on net receipts, as per the provision of the statute, and therefore couldn't be considered a double assessment.

We knew at the time that there had been spread on the record for those previous years an assessment against the companies for personal property. I don't know whether or not this assessment was on net receipts; all that we had before us was the record, but my recollection is that it was merely spread as personal property. I think 1928 was the first year that we changed the warrants to indicate that it was specially on net receipts.

[fol. 23-35] I don't remember whether or not in 1928 we did anything towards debasing or reducing the net receipts to 60 per cent of the figure submitted or took the figures that he submitted.

I can only give you my recollection. I think I said at the time that I was of opinion then, it not being a revenue statute, but a special tax on net receipts, in a statute entirely distinct from the revenue statutes, that you were assessable on the whole and that it was not to be considered personal property. That was my personal opinion as a lawyer.

I can only give you my recollection of the impression I have now. The thing would come to us on several occasions. So far as I was personally concerned I was anxious to have it litigated and determined positively for all time so we would have no more trouble with it. We were not able to litigate it, but we could give you an opportunity to take it into court and we understood that at the time. What we did at the time was to make a decision so far as we were concerned which could be made the basis of litigation to positively and definitely determine the situation after that time so that we would have no more trouble with it.

I believe Mr. Seeley requested me as a member of the Board of Review to wipe out the assessment against the so-called personal property, that was on net receipts for those previous years and that I declined to do this. It may be true that I stated that the matter should go into court and the court should decide it.

I think that the procedure in the Board of Review was to adopt the figures he submitted in 1928 without change. [fol. 23-36] I did in fact tell Mr. Louer, who was acting with the Chief Clerk, to spread those assessments in that special book for those years.

We had a special warrant printed which was different from the years before, especially on omitted net receipts, or net receipts under the particular statute that this was assessed on. At the time I considered, and so did the Board, that it was not strictly personal property, that it shouldn't be assessed as personal property, and in order to have the matter come to a head, we took the best information available and spread it of record, under the special heading.

There was some talk at the time of this being a double assessment. I myself considered that it couldn't be a double assessment, because one was personal property and one net receipts.

That matter could be litigated and determined properly.

Cross-examination:

Originally these net receipts were assessed on a personal property assessment book, in the same way that other personal property was assessed, and debased and divided by five, two or three. Then in 1921, the Supreme Court decided that net receipts were not personal property, and the tax was not a personal property tax, but was a business tax and that the tax must be extended on the full amount of the net receipts. Then a mandamus proceeding was commenced against the Board of Review and it was brought by the taxing bodies to require the Board to make the assess- [fol. 23-37] ment on Form 16. As a result of that litigation we began in 1923 to take the full amount of the net receipts as the companies returned them and assess them at the full amount, without any debasement or division, following the Supreme Court's decision. Then the companies in 1924 contended that that was in violation of the

14th Amendment and filed bills in the Superior Court and enjoined the collection of the tax on that ground. The Superior Court and the Supreme Court of Illinois sustained the tax, and then the case went to the Supreme Court of the United States. The Supreme Court of the United States reversed the judgment on the ground that the 14th Amendment would be violated if the tax was extended upon the full amount of net receipts, and that it must be extended as other personal property was extended to be valid. Then it went back to the Supreme Court of Illinois, which recalled its prior decisions which held that the tax was a business tax, and went back to the original holding that this was a personal property tax and held that the net receipts must be assessed just as other personal property.

During these years, 1923 to 1926, inclusive, while this litigation was pending the net receipts were assessed on the full amount, without debasement or division. After the decision in the case, Hanover Fire Insurance Company vs. Harding, they went back to the old scheme of personal property assessment and these insurance companies were notified by the Board of Review to make returns on Form 16, not only for 1927, but for prior years. Then you all appeared before us, Hornstein and Gilbert representing the city and Silber and Folonie representing the insurance companies. The hearings were commenced on December [fol. 23-38] 15, 1927. In the meantime a petition for a rehearing had been filed by the insurance companies and that had not been decided. There was another hearing on the 16th and then we adjourned to await the decision of the Supreme Court on the rehearing and that rehearing was denied December 20, 1927. And then we had another meeting on December 28th, which was a meeting at which Silber and Folonie did not appear but Mr. Levin and Mr. Heinecke from Folonie's office did appear. Then we proceeded to make the assessments on the best information we could get.

WILLIAM H. WEBER, called for defendant, testified as follows:

Direct examination:

I was a member of the Board of Review of Cook County from January 1, 1925, to December 31, 1930, and was a member of the Board at the time these assessments on so-called omitted net receipts for 1923 to 1927, inclusive, were spread; however, Mr. Barrett took up the matter of the insurance and I joined in after he had completed that assessment.

I know Mr. Herman Seeley but did not know at the time that these net receipts were spread on the assessments that he had a contingent interest in the results of the work.

I had no direct contact in fixing the amount of the receipts recommended; that was done under the direction of Mr. Barrett.

[fol. 23-39] STIPULATION

Stipulation showing as to each of the 17 insurance companies the amount of its returns of net receipts for each of the years 1923-1927, inclusive; the amount of the omitted net receipts assessment for each of the years 1923-1926 and the amount of the net receipts assessment made for the year 1927; the tax extended for each of the years on the Board of Review's assessment, and what would have been the amount of the tax if extended on the return of the company debased to 30% for the years 1923 to 1926, inclusive, and to 60% for the year 1927.

The figures as to the defendant, the Concordia Insurance Company, are as follows:

Albany Insurance Company

1923

Return made by the company	$27,512.73
Assessed by Board of Review as estimated "omitted net receipts"	19,250.00
Tax extended on Board of Review assessment	1,522.69
Amount of tax if extended on 30% return	652.86

1924

Return made by the company	29,154.85
Assessed by Board of Review as estimated "omitted net receipts"	20,010.00
Tax extended on Board of Review assessment	1,680.87
Amount of tax if extended on 30% of return	840.00

[fol. 23-40] 1925

Return made by the company	33,299.02
Assessed by Board of Review as estimated "omitted net receipts"	22,850.00
Tax extended on Board of Review assessment	2,067.94
Amount of tax if extended on 30% of return	900.00

1926

Return made by the company	32,288.58
Assessed by Board of Review as estimated "omitted net receipts"	22,160.00
Tax extended on Board of Review assessment	2,058.68
Amount of tax extended on 30% of return	900.00

1927

Return made by the company	27,559.00
Assessed by Board of Review as estimated "omitted net receipts"	37,830.00
Tax extended on Board of Review assessment	1,834.78
Amount of tax if extended on 60% of the amount of company return	800.00
Total taxes on Board of Review assessments	$9,164.96
Total taxes if extended on 30% of returns made by the companies for 1923-1926 and 60% for 1927	4,092.86

[fol. 23-41] Concordia Fire Insurance Company

1923

Return made by the company	$85,926.00
Assessed by Board of Review as estimated "omitted net receipts"	74,000.00
Tax extended on Board of Review assessment	5,853.40
Amount of tax if extended on 30 per cent of return	2,017.00

1924

Return made by the company	139,035.00
Assessed by Board of Review as estimated "omitted net receipts"	83,565.00
Tax extended on Board of Review assessment	7,019.48
Amount of tax if extended on 30% of return	3,528.00

1925

Return made by the company	153,315.00
Assessed by Board of Review as estimated "omitted net receipts"	55,910.00
Tax extended on Board of Review assessment	5,059.58
Amount of tax if extended on 30% of return	4,072.00

1926

Return made by the company	96,853.00
Assessed by Board of Review as estimated "omitted net receipts"	67,970.00
Tax extended on Board of Review assessment	6,312.96
Amount of tax if extended on 30% of return	2,694.00

[fol. 23-42]

1927

Return made by the company	76,291.00
Assessed by Board of Review as estimated "omitted net receipts"	121,550.00
Tax extended on Board of Review assessment	5,895.19
Amount of tax if extended upon 60% of the amount of company return	2,220.00
Total taxes on Board of Review Assessments	30,140.61
Total taxes if extended on 30% of returns made by the companies for 1923-1926 and 60% for 1927	14,531.00

Dubuque Fire and Marine Insurance Company

1923

Return made by the company	$96,227.00
Assessed by Board of Review as estimated "omitted net receipts"	129,000.00
Tax extended on Board of Review assessment	9,439.90
Amount of tax if extended on 30% of return	2,282.00

1924

Return made by the company	131,218.68
Assessed by Board of Review as estimated "omitted net receipts"	126,000.00
Tax extended on Board of Review assessment	10,611.07
Amount of tax if extended on 30% of return	3,301.00

[fol. 23-43]

1925

Return made by the company	239,524.00
Assessed by Board of Review as estimated "omitted net receipts"	147,648.00
Tax extended on Board of Review assessment	13,396.84
Amount of tax if extended on 30% of return	6,811.00

1926

Return made by the company	174,527.63
Assessed by Board of Review as estimated "omitted net receipts"	139,035.00
Tax extended on Board of Review assessment	12,659.95
Amount of tax if extended on 30% of return	4,849.00

1927

Return made by the company	177,864.10
Assessed by Board of Review as estimated "omitted net receipts"	265,110.00
Tax extended on Board of Review assessment	12,866.25
Amount of tax if extended upon 60% of the amount of company return	5,141.00
Total taxes on Board of Review assessments	58,974.01
Total taxes if extended on 30% of returns made by the companies for 1923-1926 and 60% for 1927	22,384.00

[fol. 23-44] Eureka Security Fire and Marine Insurance Company

1923

Return made by the company	$17,846.00
Assessed by Board of Review as estimated "omitted net receipts"	9,500.00
Tax extended on Board of Review assessment	751.45
Amount of tax if extended on 30% of return	419.00

1924

Return made by the company	19,922.51
Assessed by Board of Review as estimated "omitted net receipts"	10,000.00
Tax extended on Board of Review assessment	840.00
Amount of tax if extended on 30% of return	504.00

1925

Return made by the company	7,387.95
Assessed by Board of Review as estimated "omitted net receipts"	12,070.00
Tax extended on Board of Review assessment	1,092.36
Amount of tax if extended on 30% of return	190.00

1926

Return made by the company	18,023.09
Assessed by Board of Review as estimated "omitted net receipts"	20,780.00
Tax extended on Board of Review assessment	1,930.48
Amount of tax if extended on 30% of return	501.00

[fol. 23-45]

1927

Return made by the company	25,023.12
Assessed by Board of Review as estimated "omitted net receipts"	34,350.00
Tax extended on Board of Review assessment	1,665.99
Amount of tax if extended upon 60% of the amount of company return	727.00
Total taxes on Board of Review assessments	$6,280.28
Total taxes if extended on 30% of returns made by the companies for 1923-1926 and 60% for 1927	2,341.00

Firemen's Insurance Company

1923

Return made by the company	$37,993.00
Assessed by Board of Review as estimated "omitted net receipts"	36,500.00
Tax extended on Board of Review assessment	2,887.15
Amount of tax if extended on 30% of return	893.00

1924

Return made by the company	54,209.00
Assessed by Board of Review as estimated "omitted net receipts"	35,190.00
Tax extended on Board of Review assessment	2,956.00
Amount of tax if extended on 30% of return	1,360.00

[fol. 23-46]

1925

Return made by the company	58,586.00
Assessed by Board of Review as estimated "omitted net receipts"	44,985.00
Tax extended on Board of Review assessment	4,071.17
Amount of tax if extended on 30% of return	1,601.00

1926

Return made by the company	77,591.00
Assessed by Board of Review as estimated "omitted net receipts"	57,300.00
Tax extended on Board of Review assessment	5,233.17
Amount of tax if extended on 30% of return	2,155.00

1927

Return made by the company	111,615.00
Assessed by Board of Review as estimated "omitted net receipts"	154,770.00
Tax extended on Board of Review assessment	7,506.37
Amount of tax if extended upon 60% of the amount of company return	3,204.70
Total taxes on Board of Review assessments	$22,653.86
Total taxes if extended on 30% of returns made by the companies for 1923-1926 and 60% for 1927	9,213.70

[fol. 23-47] Girard Fire and Marine Insurance Company

1923

Return made by the company	$14,902.00
Assessed by Board of Review as estimated "omitted net receipts"	13,500.00
Tax extended on Board of Review assessment	1,067.85
Amount of tax if extended on 30% of return	355.00

1924

Return made by the company	19,380.00
Assessed by Board of Review as estimated "omitted net receipts"	15,000.00
Tax extended on Board of Review assessment	1,260.00
Amount of tax if extended on 30% of return	478.00

1925

Return made by the company	30,198.00
Assessed by Board of Review as estimated "omitted net receipts"	27,020.00
Tax extended on Board of Review assessment	2,444.32
Amount of tax if extended on 30% of return	814.00

1926

Return made by the company	61,280.00
Assessed by Board of Review as estimated "omitted net receipts"	45,000.00
Tax extended on Board of Review assessment	4,180.50
Amount of tax if extended on 30% of return	1,700.00

[fol. 23-48]

1927

Return made by the company	66,792.00
Assessed by Board of Review as estimated "omitted net receipts"	103,660.00
Tax extended on Board of Review assessment	5,027.53
Amount of tax if extended upon 60% of the amount of company return	1,920.00
Total taxes on Board of Review assessments	$13,980.20
Total taxes if extended on 30% of returns made by the companies for 1923-1926 and 60% for 1927	5,267.00

Globe Insurance Company

1923	
Return made by the company	$30,404.89
Assessed by Board of Review as estimated "omitted net receipts"	34,500.00
Tax extended on Board of Review assessment	2,728.95
Amount of tax if extended on 30% of return	711.00
1924	
Return made by the company	32,151.00
Assessed by Board of Review as estimated "omitted net receipts"	30,160.00
Tax extended on Board of Review assessment	2,533.46
Amount of tax if extended on 30% of return	806.00
[fol. 23-49] **1925**	
Return made by the company	34,558.74
Assessed by Board of Review as estimated "omitted net receipts"	23,715.00
Tax extended on Board of Review assessment	2,146.24
Amount of tax if extended on 30% of return	923.00
1926	
Return made by the company	33,442.12
Assessed by Board of Review as estimated "omitted net receipts"	22,950.00
Tax extended on Board of Review assessment	2,132.08
Amount of tax if extended on 30% of return	929.00
1927	
Return made by the company	35,844.84
Assessed by Board of Review as estimated "omitted net receipts"	49,200.00
Tax extended on Board of Review assessment	2,386.20
Amount of tax if extended upon 60% of the amount of company return	1,041.00
Total taxes on Board of Review assessments	$11,926.93
Total taxes if extended on 30% of returns made by the companies for 1923-1926 and 60% for 1927	4,410.00

[fol. 23-50] Mechanics' Insurance Company

1923	
Return made by the company	$11,680.00
Assessed by Board of Review as estimated "omitted net receipts"	17,750.00
Tax extended on Board of Review assessment	1,404.04
Amount of tax if extended on 30% of return	268.00
1924	
Return made by the company	34,229.00
Assessed by Board of Review as estimated "omitted net receipts"	21,340.00
Tax extended on Board of Review assessment	1,792.60
Amount of tax if extended on 30% of return	856.00
1925	
Return made by the company	53,420.00
Assessed by Board of Review as estimated "omitted net receipts"	43,605.00
Tax extended on Board of Review assessment	3,946.25
Amount of tax if extended on 30% of return	1,438.00
1926	
Return made by the company	105,131.00
Assessed by Board of Review as estimated "omitted net receipts"	82,275.00
Tax extended on Board of Review assessment	7,643.38
Amount of tax if extended on 30% of return	2,926.00

[fol. 23-51]

1927	
Return made by the company	114,965.00
Assessed by Board of Review as estimated "omitted net receipts"	159,040.00
Tax extended on Board of Review assessment	7,713.46
Amount of tax if extended upon 60% of the amount of company return	4,313.00
Total taxes on Board of Review assessments	22,499.73
Total taxes if extended on 30% of returns made by the companies for 1923-1926 and 60% for 1927	9,801.00

Mechanics & Traders Insurance Company

1923

Return made by the company	$14,473.00
Assessed by Board of Review as estimated "omitted net receipts"	16,900.00
Tax extended on Board of Review assessment	1,336.79
Amount of tax if extended on 30% of return	332.00

1924

Return made by the company	40,988.00
Assessed by Board of Review as estimated "omitted net receipts"	23,570.00
Tax extended on Board of Review assessment	1,979.93
Amount of tax if extended on 30% of return	1,008.00

[fol. 23-32] 1925

Return made by the company	47,640.00
Assessed by Board of Review as estimated "omitted net receipts"	27,855.00
Tax extended on Board of Review assessment	2,520.90
Amount of tax if extended on 30% of return	1,030.00

1926

Return made by the company	72,043.00
Assessed by Board of Review as estimated "omitted net receipts"	41,705.00
Tax extended on Board of Review assessment	3,874.44
Amount of tax if extended on 30% of return	1,950.00

1927

Return made by the company	46,241.00
Assessed by Board of Review as estimated "omitted net receipts"	57,400.00
Tax extended on Board of Review assessment	2,783.90
Amount of tax if extended on 60% of the amount of company return	1,344.00
Total taxes on Board of Review assessments	12,495.96
Total taxes if extended on 30% of returns made by the companies for 1923-1926 and 60% for 1927	5,937.00

[fol. 23-53] Milwaukee Mechanics' Insurance Company

1923

Return made by the company	$138,401.00
Assessed by Board of Review as estimated "omitted net receipts"	107,000.00
Tax extended on Board of Review assessment	8,463.70
Amount of tax if extended on 30% of return	3,274.00

1924

Return made by the company	143,149.00
Assessed by Board of Review as estimated "omitted net receipts"	110,750.00
Tax extended on Board of Review assessment	9,303.02
Amount of tax if extended on 30% of return	3,603.00

1925

Return made by the company	108,196.36
Assessed by Board of Review as estimated "omitted net receipts"	62,875.00
Tax extended on Board of Review assessment	5,690.21
Amount of tax if extended on 30% of return	2,932.00

1926

Return made by the company	142,574.42
Assessed by Board of Review as estimated "omitted net receipts"	103,925.00
Tax extended on Board of Review assessment	9,639.17
Amount of tax if extended on 30% of return	3,957.00

[fol. 23-54]

1927

Return made by the company	145,345.00
Assessed by Board of Review as estimated "omitted net receipts"	202,210.00
Tax extended on Board of Review assessment	9,811.73
Amount of tax if extended upon 60% of the amount of company return	4,219.50
Total taxes on Board of Review assessments	$42,907.83
Total taxes if extended on 30% of returns made by the companies for 1923-1926 and 60% for 1927	$17,985.50

National Fire Insurance Company

1923

Return made by the company	$354,950.00
Assessed by Board of Review as estimated "omitted net receipts"	106,485.00
Tax extended on Board of Review assessment	8,423.00
Amount of tax if extended on 30% of return	8,305.00

1924

Return made by the company	340,759.00
Assessed by Board of Review as estimated "omitted net receipts"	191,093.00
Tax extended on Board of Review assessment	16,043.40
Amount of tax if extended on 30% of return	8,400.00

[fol. 23-55]

1925

Return made by the company	340,203.00
Assessed by Board of Review as estimated "omitted net receipts"	192,840.00
Tax extended on Board of Review assessment	17,453.48
Amount of tax if extended on 30% of return	9,231.00

1926

Return made by the company	378,489.00
Assessed by Board of Review as estimated "omitted net receipts"	248,165.00
Tax extended on Board of Review assessment	23,032.45
Amount of tax if extended on 30% of return	10,497.00

1927

Return made by the company	378,782.00
Assessed by Board of Review as estimated "omitted net receipts"	439,250.00
Tax extended on Board of Review assessment	21,264.41
Amount of tax if extended upon 60% of the amount of company return	10,999.00
Total taxes on Board of Review assessments	$86,216.54
Total taxes if extended on 30% of returns made by the companies for 1923-1926 and 60% for 1927	$47,422.00

[fol. 23-56] National-Ben Franklin Fire Insurance Company

1923

Return made by the company	$80,328.00
Assessed by Board of Review as estimated "omitted net receipts"	65,300.00
Tax extended on Board of Review assessment	5,165.23
Amount of tax if extended on 30% of return	1,898.00

1924

Return made by the company	77,241.00
Assessed by Board of Review as estimated "omitted net receipts"	70,965.00
Tax extended on Board of Review assessment	5,961.08
Amount of tax if extended on 30% of return	1,945.00

1925

Return made by the company	70,537.00
Assessed by Board of Review as estimated "omitted net receipts"	152,925.00
Tax extended on Board of Review assessment	13,839.00
Amount of tax if extended on 30% of return	1,900.00

1926

Return made by the company	55,733.00
Assessed by Board of Review as estimated "omitted net receipts"	69,720.00
Tax extended on Board of Review assessment	6,477.01
Amount of tax if extended on 30% of return	1,493.00

[fol. 23-57] 1927

Return made by the company	60,493.00
Assessed by Board of Review as estimated "omitted net receipts"	143,030.00
Tax extended on Board of Review assessment	6,946.27
Amount of tax if extended upon 60% of the amount of company return	1,755.70
Total taxes on Board of Review assessments	$38,388.59
Total taxes if extended on 30% of returns made by the companies for 1923-1926 and 60% for 1927	8,991.70

Reliable Fire Insurance Company of Dayton

1923

Return made by the company	$19,156.35
Assessed by Board of Review as estimated "omitted net receipts"	13,500.00
Tax extended on Board of Review assessment	1,067.85
Amount of tax if extended on 30% of return	454.57

1924

Return made by the company	22,205.93
Assessed by Board of Review as estimated "omitted net receipts"	15,240.00
Tax extended on Board of Review assessment	1,280.20
Amount of tax if extended on 30% of return	554.00

[fol. 23-58]

1925

Return made by the company	26,108.61
Assessed by Board of Review as estimated "omitted net receipts"	17,920.00
Tax extended on Board of Review assessment	1,621.77
Amount of tax if extended on 30% of return	705.00

1926

Return made by the company	25,246.29
Assessed by Board of Review as estimated "omitted net receipts"	17,325.00
Tax extended on Board of Review assessment	1,609.52
Amount of tax if extended on 30% of return	696.00

1927

Return made by the company	27,897.83
Assessed by Board of Review as estimated "omitted net receipts"	38,290.00
Tax extended on Board of Review assessment	1,857.09
Amount of tax if extended upon 60% of the amount of company return	808.00
Total taxes on Board of Review assessments	$7,436.43
Total taxes if extended on 30% of returns made by the companies for 1923-1926 and 60% for 1927	3,217.57

[fol. 23-59] Security Fire Insurance Company, of Davenport, Iowa

1923

Return made by the company	$23,988.17
Assessed by Board of Review as estimated "omitted net receipts"	16,340.00
Tax extended on Board of Review assessment	1,292.52
Amount of tax if extended on 30% of return	569.00

1924

Return made by the company	28,047.89
Assessed by Board of Review as estimated "omitted net receipts"	19,250.00
Tax extended on Board of Review assessment	1,617.02
Amount of tax if extended on 30% of return	705.00

1925

Return made by the company	33,698.07
Assessed by Board of Review as estimated "omitted net receipts"	23,125.00
Tax extended on Board of Review assessment	2,092.84
Amount of tax if extended on 30% of return	900 00

1926

Return made by the company	36,587 37
Assessed by Board of Review as estimated "omitted net receipts"	25,110.00
Tax extended on Board of Review assessment	2,332.76
Amount of tax if extended on 30% of return	926.00

[fol. 23-60] 1927

Return made by the company	39,216.28
Assessed by Board of Review as estimated "omitted net receipts"	53,830.00
Tax extended on Board of Review assessment	2,610.78
Amount of tax if extended upon 60% of the amount of company return	1,140.00

Total taxes on Board of Review assessments	$9,945.92
Total taxes if extended on 30% of returns made by the companies for 1923, 1926 and 60% for 1927	4,240.00

Superior Fire Insurance Company

1923

Return made by the company	$46,950.00
Assessed by Board of Review as estimated "omitted net receipts"	45,425.00
Tax extended on Board of Review assessment	3,593.15
Amount of tax if extended on 30% of return	1,107.00

1924

Return made by the company	46,468.00
Assessed by Board of Review as estimated "omitted net receipts"	54,220.00
Tax extended on Board of Review assessment	4,554.51
Amount of tax if extended on 30% of return	1,167.00

[fol. 23-61]

1925

Return made by the company	62,215.00
Assessed by Board of Review as estimated "omitted net receipts"	46,664.00
Tax extended on Board of Review assessment	4,221.33
Amount of tax if extended on 30% of return	1,683.00

1926

Return made by the company	22,285.00
Assessed by Board of Review as estimated "omitted net receipts"	40,510.00
Tax extended on Board of Review assessment	3,763.42
Amount of tax if extended on 30% of return	613.00

1927

Return made by the company	17,248.00
Assessed by Board of Review as estimated "omitted net receipts"	63,280.00
Tax extended on Board of Review assessment	3,069.10
Amount of tax if extended upon 60% of the amount of company return	499.55

Total taxes on Board of Review assessments	19,201.51
Total taxes if extended on 30% of returns made by the companies from 1923-1926 and 60% for 1927	5,069.55

[fol. 23-62] Transcontinental Insurance Company

1926

Return made by the company	$22,459.00
Assessed by Board of Review as estimated "omitted net receipts"	19,260.00
Tax extended on Board of Review assessment	1,789.27
Amount of tax if extended on 30% of return	532.00

1927

Return made by the company	53,696.00
Assessed by Board of Review as estimated "omitted net receipts"	125,000.00
Tax extended on Board of Review assessment	6,062.00
Amount of tax if extended upon 60% of the amount of company return	1,559.00
Total taxes on Board of Review assessments	$7,851.27
Total taxes if extended on 30% of returns made by the companies for 1923-1926 and 60% for 1927	2,091.00

[fol. 23-63] United American Insurance Company of Pennsylvania

1923

Return made by the company	$26,158.63
Assessed by Board of Review as estimated "omitted net receipts"	23,800.00
Tax extended on Board of Review assessment	1,882.58
Amount of tax if extended on 30% of return	616.00

1924

Return made by the company	17,434.11
Assessed by Board of Review as estimated "omitted net receipts"	20,060.00
Tax extended on Board of Review assessment	1,685.06
Amount of tax if extended on 30% of return	428.00

1925

Return made by the company	19,656.98
Assessed by Board of Review as estimated "omitted net receipts"	13,490.00
Tax extended on Board of Review assessment	1,220.88
Amount of tax if extended on 30% of return	515.00

[fol. 23-64]

1926

Return made by the company	19,347.66
Assessed by Board of Review as estimated "omitted net receipts"	13,280.00
Tax extended on Board of Review assessment	1,233.73
Amount of tax if extended on 30% of return	529.00

1927

Return made by the company	19,895.89
Assessed by Board of Review as estimated "omitted net receipts"	27,310.00
Tax extended on Board of Review assessment	1,324.56
Amount of tax if extended on 60% of the amount of company return	576.00
Total taxes on Board of Review assessments	$7,346.81
Total taxes if extended on 30% of returns made by the companies for 1923-1926 and 60% for 1927	2,664.00

[fol. 23-65] PROCEEDINGS BEFORE BOARD OF REVIEW DECEMBER 15, 16, AND 28, 1927

December 15, 1927, there were present the following:

Mr. Edward R. Litsinger, Chairman; Mr. Charles V. Barrett and Mr. William H. Weber, constituting the Board.

Hon. Samuel A. Ettelson, Corporation Counsel, by Mr. Hiram T. Gilbert, Special Counsel for the City of Chicago, and Mr. Herman B. Seeley, Mr. Leon Hornstein, appeared on behalf of the City of Chicago.

Messrs. Hicks & Folonie; by Mr. Ernest H. Hicks, and Mr. Frederick D. Silber, Mr. Martin J. Isaacs, Mr. Samuel

Levin, Mr. Luther F. Binkley, Mr. Phillip H. Treacy, appeared on behalf of certain insurance companies.

Thereupon the following occurred:

Mr. Barrett: These complaints originated in the office of the Corporation Counsel of the City of Chicago. In order that you may be fully aware of the Corporation Counsel's complaints, I think it might be well for the representatives of the Corporation Counsel's office to make a statement to elucidate matters, if there is anything to be done in that direction.

Mr. Gilbert: These complaints arise out of Section 30 of the Fire, Marine, Inland Navigation Insurance Company Act passed in 1869. The section requires *from* fire, marine and inland navigation insurance companies to file their report of net proceeds to be entered on the tax lists and [fol. 23-66] subjected to the same rate of taxation as other personal property. The controversy in reference to this matter is an old one. It arose about 1918. The companies, some of them, refused to report their taxes on their net proceeds, and application was made for mandamus in the Circuit Court to compel the agent to make return. The first case that went to the Supreme Court was what is called the Kent case.

Mr. Barrett: First of all, will you tell the court what you are trying to have the Board do, and when we come to the legal aspect, the issues, we can listen to that.

Mr. Gilbert: We are trying to have the Board list the net receipts of these insurance companies for the present year and past years, and base them as the law required to make an assessment.

Mr. Barrett: All right, tell us what your idea of the law is.

Mr. Gilbert: Well, the law is settled now by the Supreme Court of Illinois, as far as it has been settled, is that these receipts are on the same basis as other property. That is to say, they are not to be assessed upon the full amount, but on the debased value, which for the present year is the full value, and for past years it is one-third or one-half or one-fifth. That is what we are asking.

I do not know what more there is to say. These companies were assessed at one time on the same basis as other properties, and the Supreme Court held that that was wrong, that they should be assessed upon the full amount.

It was so assessed, and then the tax was contested and the Supreme Court adhered to its decision. It went to the [fol. 23-67] Supreme Court of the United States, and they held that that was wrong, that the tax extended upon the full amount of net proceeds was in violation of the Fourteenth Amendment. Our Supreme Court overruled that previous decision in the Kent case and in the Barrett case held the assessment was made to be made on the same basis as other property. Now, we are asking that the receipts of these companies for the past five years or four years; I think it is four or five years, on which they were assessed on the full basis, be reassessed upon the proper basis, and also that they be assessed upon the net receipts which they omitted to report in previous years.

Mr. Barrett: Well, you claim now they omitted to report this year the net proceeds.

Mr. Silber: I can answer that.

Mr. Seeley: I went through the books, and most of the companies made returns of the net proceeds, but not upon the form prescribed by statute.

Mr. Hicks: You mean Form 16?

Mr. Silber: We made a return by way of affidavit setting up our net proceeds.

Mr. Barrett: Well, you haven't proceeded last year——

Mr. Silber: We followed the same proceeding as last year.

Mr. Seeley: They made a return for the current year, but made no return for back years. We complain about those returns.

The Chairman: Your statement about the Supreme Court of Illinois, that the net premiums are to be assessed on the same basis as other property.

[fol. 23-68] Mr. Gilbert: Yes. For the present year they would be assessed on the full value.

The Chairman: That is what the distinction is, the assessed valuation against the full value.

Mr. Gilbert: That is the distinction.

Mr. Barrett: Well, as a matter of fact, prior to the Supreme Court's ruling upon it, it was your contention that these particular receipts under this statute, special statute, which is not a part of the Revenue Act, were to be assessed by this Board as a whole, and not to be divided by two as the assessed value. Now, you say the Supreme

Court has taken it up and decided that is not so, that it should be assessed on assessed value. Of course, at this particular time that makes no difference because the assessed value now is the whole value.

Mr. Gilbert: I want to say that I never agreed with that construction.

Mr. Barrett: You don't agree with the United States Supreme Court?

Mr. Gilbert: No, and I didn't agree with the State Supreme Court on that point.

The Chairman: I wonder if we could find out from the representatives of the insurance companies as to whether there is any question about that statement of Judge Gilbert?

Mr. Hicks: I differ entirely with Judge Gilbert. This law is not settled either in the State Supreme Court because the last decision has been pending almost a year, which they have not decided, so we have got no law on it at all.

[fol. 23-69] Mr. Barrett: Well, we don't care about that, we can settle the law very easily here.

Mr. Silber: Well, I agree with Mr. Hicks on what he has just said, but I have something more to say. Well, as to the question about agreement as to the law, that has been tested, that has been tried out by the tax authorities in the State of Illinois on Section 30, and up to date it has been decided against the tax authorities, and that today the law is settled here as far as it can be settled under Section 30; that is, you can't tax re-insurance companies doing a re-insurance business in Illinois; and can't tax foreign stock fire insurance on the basis of 100 per cent extended net proceeds.

Mr. Gilbert: I will say that as to the decision of the Supreme Court of Illinois, they decided this case at the June term, and decided it, according to my contention, that the tax was a legal tax if assessed upon the debased value. A petition for a rehearing has been filed and is still pending.

Mr. Silber: Under the decision of the United States Supreme Court in 71 Lawyers Edition, Hanover Fire Insurance Company vs. Carr, that court in reviewing Section 30, it held it is unconstitutional and void.

Mr. Sibler: Our notice requires us to file returns back to 1870, 57 years.

Mr. Barrett: I am talking about the future.

Mr. Silber: We agree on that.

Mr. Seeley: I think one point has been overlooked here. When the entry of assessment is made by the Board of Assessors for the full amount of net proceeds, it comes before the Board of Review then as to whether all of the [fol. 23-70] property assessments, as made, are absolutely full value, or whether there should be an equalization in this case.

Mr. Barrett: Equalization and my point don't conflict with each other at all. That will come up later. Let me ask you this, Judge Gilbert. I take it, it is contended by the other side that Section 30 has been declared unconstitutional by the United States Supreme Court. What do you say about that?

Mr. Gilbert: No, they didn't declare any such thing; they declared this tax as asesssed on the full value was in violation of the Fourteenth Amendment, but they took care to say also, that in past years when the Board of Review or Assessors debased this property as other property was debased in value, it might well have been said that there was no inequality between foreign and domestic companies. They said that in plain language.

Mr. Barrett: Then you insist that Section 30 is in full force?

Mr. Gilbert: Certainly.

Mr. Barrett: Has it been adjudicated by the Supreme Court of Illinois?

Mr. Silber: No.

Mr. Gilbert: It has been decided.

Mr. Seeley: The Supreme Court of the United States has not pronounced the statute to be invalid, but they had held that the assessment then under review of 100 per cent was invalid, and the county clerk would be authorized to divide it by two.

Mr. Barrett: Well, I think we should read the decision [fol. 23-71] of the United States Supreme Court, and also the Supreme Court of the State of Illinois. If it is the law that Section 30 has been declared unconstitutional, then we could do nothing else but disregard the matter entirely.

Mr. Silber: I would like to have you hear me on some other aspects of this matter.

Mr. Barrett: Well, I know, but let's have this one first.

Mr. Silber: I mean on this matter. I don't think the

Board of Review at this moment understands what we are here for, I don't think you know what we have been called upon to do.

Mr. Barrett: We are trying to establish some principles first, and if such eminent lawyers as you will agree as to the law, but evidently you don't. If there was an agreement as to the law, we could take the next step. Now, if there is no agreement as to the law, we will have to determine it.

Mr. Silber: There is an agreement as to the law, as to certan principles applying to the Board of Review, and those are the things I want to bring to your Honor's notice. That is all. I simply want to call attention of the Board of Review to some fundamental facts about the power of the Board to act in this matter at all. For six years the Board has continued, year by year, to perpetuate the same errors against various stock fire insurance companies in violation of the plain principles of the statute, and those errors have grown to such an extent that there was ten or twelve million dollars of so-called taxes on the tax books of the county, [fol. 23-72] and not a dollar of those taxes has been paid or will be paid on account of those errors.

Now, the insurance companies up to 1922 were very glad indeed to shoulder their burden of the public expense, and they did so by paying their share. In 1922, when People against Kent was decided an agent of a foreign insurance was mandamused to make a return under Section 30, and the Supreme Court of Illinois in that case held inferentially that the net proceeds should be extended on a basis of 100 per cent. In People vs. Barrett this Board was mandamused to spread an assessment on the basis of 100 per cent, and in the subsequent case of Hanover vs. Carr, the Supreme Court said that was correct, and then the United States Supreme Court said it was wrong and reversed that principle, and said, not that you could assess taxes upon the basis of 50 per cent, or like other personal property, but said that because in the past it had been paid on that basis, there might be a condition for saying that from those conditions, here was nothing discriminatory, arbitrary and unlawful, but that is all the court said in the case of Hanover vs. Carr. When the case came back to the Supreme Court of Illinois, the taxing authorities insisted that they

were wrong in claiming an extension of 100 per cent net proceeds, and the Supreme Court handed down an opinion in which they said that would support the constitutionality of Section 30 if the company's net proceeds could be assessed on the same basis as other property, and that opinion is pending on a rehearing, is number 1 on the rehearing docket at the June term and has never been decided. That is the complaint of five or six other cases in the Supreme [fol. 23-73] Court, in which the insurance companies have been successful in every case, and the tax authorities have been unsuccessful. Those cases hold that you can't assess net proceeds. The Skandia case holds that you can't make a foreign insurance company pay on certain additional net proceeds; the Columbia Insurance Company case, that was a bill to make foreign insurance companies account, and there are 200 of those bills pending in the Superior and Circuit Courts of this county. They can't compel foreign insurance companies to account for thirty years' back taxes as they are trying to make us do this morning, by asking us to file returns back to 1870.

Now, I said I didn't think the members of this Board understood what we are here for. The insurance companies are not outlaws, they represent substantial interests in this community, and they have been ready, able and willing and are now ready, able and willing to pay taxes.

Now, I want to say, that under the Revenue Act you haven't any power in this case except to list the net proceeds according to the return we file. Under the act, under the statute, Section 30——

The Chairman: You mean to say that all we could do is to automatically list or take your figures as you list them?

Mr. Silber: Extend them.

The Chairman: Suppose those figures are wrong or fraudulent?

Mr. Silber: The Supreme Court has said you can mandamus us to make a correct return.

The Chairman: What is the use in our sitting here?

[fol. 23-74] Mr. Silber: Absolutely nothing——

The Chairman: If you file any kind of fake return that would be fraudulent, we couldn't make any corrections?

Mr. Gilbert: Let me ask, are you sure of your statement of the opinion in People vs. Barrett?

Mr. Silber: I am sure.

Mr. Gilbert: Why grant a mandamus against the Board of Review then?

Mr. Silber: Because they had before them the returns made by the company in each case.

Mr. Barrett: I only interrupt to get your point.

Mr. Silber: I want to answer all questions that occur to you.

The point we make is this, that since you are not exercising power under the Revenue Act, and since all you can do is to follow the opinion of the Supreme Court, and Section 30 of the act, Section 30 of the act says every agent, every insurance company having an agent here, must file a net return, net proceeds, which proceeds shall be listed and assessed at the same rate as other personal property. It doesn't say a word about assessors, it doesn't say a word about the Board of Review.

Now, your power is purely statutory, and nothing else, and you can't do a thing that the statute does not give you power to do. You have no power under the Revenue Act over net proceeds; you have power under Section 30 and Section 30 doesn't say a word about giving you power to change the returns.

[fol. 23-75] Mr. Barrett: Suppose an error was made, and the insurance company came in and represented that an error was made?

Mr. Silber: They can correct it.

Mr. Barrett: Has the Supreme Court sustained you?

Mr. Silber: Absolutely.

Mr. Barrett: Then, read to us from that decision. If what you say is right, then there is no use of doing anything further.

Mr. Silber: In People vs. Kent and People vs. Barrett, 309 Ill. 64, the Supreme Court said this.

Mr. Silber: 309 Ill., page 64.

"However, this tax is not assessed under the Revenue Act but under Section 30 of the Fire, Marine and Inland Navigation Act. Paragraph 4 of Section 2 of the act of 1919—

"It is contended by the answer of the respondents that they have no authority to compel by mandamus the making of returns by the agents of foreign companies. That question has been settled otherwise in People vs. Kent, supra,

where it was held that such agents may be compelled by writ of mandamus to make the return required by Section 30."

Now, that is the limit of your power under Section 30.

Mr. Barrett: I don't agree with you, that your statement is as outlined in that opinion; you have gone further; that doesn't say we haven't any power.

Mr. Silber: Where do you get it then?

Mr. Barrett: Well, you can show us where we haven't [fol. 23-76] any right; we are going to exercise it until the court stops us.

Mr. Silber: All right, I can answer you. You are admitting, Mr. Barrett, that the only right the assessor has is the right created by statute. Now, then, unless you can point in the statute to the right, the right you are exercising, you are usurping a right.

Mr. Barrett: We have a right to at least consider that the act meant something, and for an act to be passed merely to give you the right to do what you want to, doesn't seem logical to me.

Mr. Silber: That act has been in force since 1857.

Mr. Barrett: Well, it has never been much benefit to the people of Cook County.

Mr. Silber: It has been very profitable, we have paid two million dollars in taxes under that act.

Mr. Barrett: That is a lot of money, but sometimes it may not be in proportion to what you ought to pay.

Mr. Silber: We are ready to pay what we should pay, if you can show us what we ought to pay.

Mr. Barrett: The courts are final, but we are not going to take your reading of that opinion.

Mr. Silber: I don't ask you to.

The Chairman: That word was omitted there to save repetition. Then, it does say "assess," and we don't simply automatically confirm your figures.

Mr. Silber: No, you don't, the Supreme Court has said in another case that you don't.

Mr. Barrett: You don't agree with the language read in your argument then?

[fol. 23-77] Mr. Silber: Well, I am calling attention to the fact that in another case the Supreme Court has said you don't "assess."

The Chairman: Read that clause again.

Mr. Silber: "However, this tax is not assessed under the Revenue Act but under Section 30 of the Fire, Marine and Inland Navigation Act."

The Chairman: Then, according to that language, it is not assessed under the Revenue Act, but it is assessed under Section 30.

Mr. Silber: Yes, if you are simply searching for the word——

The Chairman: Why not assess? We don't simply confirm some figures that were made by you.

Mr. Silber: Let me read to you from 317 Ill. 372:

"It will be noted that under Section 30 the company's net proceeds are not to be valued——"

In other words, the Supreme Court has said you can't value anything here, because we are bound to make a return, and if our return is wrong, you can compel us to correct it.

Mr. Barrett: Who do you make the return to?

Mr. Silber: Make the return to the assessors, that is what the statutes say.

Mr. Barrett: It doesn't say that the Revenue Act gives us power to review.

Mr Silber: Not under Section 30.

Mr. Barrett: Doesn't it give that general power?

Mr. Silber: No, not as to Section 30.

Mr. Barrett: Doesn't it give us any general power?

Mr. Silber: Sure.

[fol. 23-78] Mr. Gilbert: Doesn't the statute give the Board of Review power to assess omitted receipts?

Mr. Silber: Yes, I am coming to that, it does, the original act prior to 1898 when the Revenue Act was passed, gave the assessor power to assess omitted property, but the Supreme Court passed upon omitted property in the Warner case in the 238 Ill., and the Taylor case in the 211 Ill., and said that after that neither the assessor nor the Board of Review can consider property that has ever been listed at all, as omitted property.

Now, in the cases here we list these net proceeds by making affidavit, and under the authority of the last three cases of the Supreme Court the Board of Review has no

power to assess omitted property, because each year that class of property was before you and was assessed.

Now, I am not trying to get any benefits for these insurance companies, but I want to tell you that for six years the insurance companies have been defending against two hundred bills for accounting which went back thirty years. They are here asked this morning to account for 57 years. They have pending in the Circuit and Superior Courts over one hundred suits for accounting for thirty years. They have sued us in the Municipal Court on these taxes and we have had to try them, and judgments for the defendants in every case. We have been cited here, not because we don't want to pay taxes, but for the Board of Review in this case to exercise a power it had no right to exercise. For instance, each year our returns under oath have been disregarded. You have assessed a fifty per cent penalty, and haven't had a shadow of power to assess it.

[fol. 23-79] Mr. Barrett: Has the Supreme Court said that?

Mr. Silber: No, you have said it.

Mr. Barrett: Has the Supreme Court confirmed what you have just said?

Mr. Silber: The court has said this tax is not under the Revenue Act.

Mr. Barrett: You are talking now of the Supreme Court. If the Supreme Court tells us we haven't any right to do it, we are not going to do it.

Mr. Silber: No, but what power have you to do it?

Mr. Barrett: You tell us where we haven't the power.

Mr. Silber: I am telling you where you haven't the power; you have assessed a fifty per cent penalty——

Mr. Barrett: We have the right to review whatever the assessors under general powers give us. It is my opinion that we are going as far as whatever powers are given us.

Mr. Silber: I am not going to quarrel with you as to what you think your powers are; I am going to respectfully tell you what I think they are, and you don't have to listen to me if you don't care to. I am simply trying to tell you what I think the powers of the Board are. Now you have assessed a 50 per cent penalty against us here, and there isn't any warrant in the Insurance Act for assessing any penalty against us. We have protested here, we have here sworn returns every year. Why should that 50 per cent

penalty be assessed? In 1924 there were two kinds of assessments, one on a 100 per cent basis, and one on a 50 per [fol. 23-80] cent basis; both taxes stand as taxed against us which, if they were upheld as to constitutionality, we might have to pay, and there isn't any fairness in that, and there isn't any law in that. Now, today we come here with a demand that we file returns for 57 years back, a demand that is humanly impossible.

Mr. Barrett: That is almost the same as 57 varieties.

Mr. Silber: Yes, I agree with you. But just imagine what that means, if we were to try it, under this Section 30, where it is impossible to make returns. Why, the companies would have to come to the City of Chicago and find out who the agent was for 57 years, all the consolidations and changes of agents for 57 years, and follow them down.

Mr. Barrett: Fifty-seven years ago I wasn't thinking about that.

Mr. Silber: Neither was I. Now, that is the situation and in our judgment the Board of Review ought to pay no attention to a notice such as this, in order to get results. If we want results, and we are willing to pay taxes on a legal basis, but if we want results, then, we should be protected from tax harassing and get down to a basis where we can get results.

Mr. Barrett: Who do you represent, all of them?

Mr. Silber: I represent about two hundred of them.

Mr. Barrett: Will you take just one company, and tell us about that particular instance?

Mr. Silber: The Hanover, prior to April 1st, prepared an affidavit from its books and records of net receipts that [fol. 23-81] it had received in Cook County, and filed that affidavit with the Board of Assessors within the time required by law. That affidavit was a correct statement of the net proceeds. The Board of Assessors disregarded it and passed the matter on to the Board of Review. That affidavit is the return, and that return is here for consideration by the Board. Now, the agent of these other companies did exactly the same thing, each of them filed a sworn return in the form of affidavit.

Mr. Barrett: Now, Mr. Hornstein, here is the record filed by the Board of Assessors, by L. E. Angerman, agents, Insurance Exchange building, Chicago, Illinois.

Mr. Hornstein: Our objection to this is that it is not made out in the form required by the Supreme Court. Our objection to the particular return is that it is not made out on Form 16, which the Supreme Court said should be used for that purpose.

Mr. Hicks: The Supreme Court hasn't said any such thing. It has been pending for four years and has never been decided. You are trying to mislead this Board.

Mr. Hornstein: The Supreme Court has upheld the returns on form 16, said that the returns shall be made out on Form 16. Now, there is nothing on this here which indicates how this was arrived at.

Mr. Barrett: Where is the decision which says that it must be made on Form 16?

Mr. Hicks: That is referred to in the Barrett case?

Mr. Silber: Well, if the court please, the Barrett case [fol. 23-82] did say that Form 16 was a proper exercise of power, but in a subsequent case, the Supreme Court has had it under advisement since October, 1925, and not yet decided it.

Mr. Barrett: What is the one decision that now stands?

Mr. Silber: The one decision that now stands with refernce to Form 16 is the Barrett case, in which they said that Form 16 was proper to use.

Mr. Barrett: Then, until such time as the Supreme Court overrules that, we have the right to go on.

Mr. Silber: No.

Mr. Barrett: What is the matter with it?

Mr. Silber: We don't recognize that the Board of Review has any power to compel Form 16, or any other form.

Mr. Barrett: Then you are disagreeing with the Supreme Court.

Mr. Silber: Not at all.

Mr. Barrett: You are trying to convince the Supreme Court it was wrong.

Mr. Silber: No, we don't disagree on what the Supreme Court said in that case, but we don't propose to use Form 16 because we don't have to, and nobody can compel us to. You haven't at the present time any power. We are willing to make a sworn statement. Now, if you can find anything in the statute to make us follow Form 16——

Mr. Barrett: But the Supreme Court has said the Board of Review has the power to do it.

Mr. Silber: No.

[fol. 23-83] Mr. Barrett: What did it say?

Mr. Silber: The Supreme Court said, as a general proposition, that the State Tax Commission had the right to enforce Form 16, that in their opinion it was within the province of the State Tax Commission to make that form general, that is what they said.

Mr. Hornstein: They said it should be prescribed.

Mr. Silber: No, nothing else——

Mr. Hornstein: Now, as the matter stands, they make a return there which we can't check, can't do anything except take their final figure. Now, their final figure may be correct, for all we know at this time, but their return should be made on some proper form so that we can determine whether this is correct or not.

Mr. Silber: You can get a correct certificate by mandamus.

Mr. Barrett: I suppose the only way we could ever get it would be by mandamus.

Mr. Silber: That is the only way we will ever give it to you.

Mr. Barrett: Go on, Mr. Hornstein, from that point on.

Mr. Hornstein: That is all I have to say in regard to that. We don't know whether that is correct or not. I say they should make their returns on Form 16 so that we will know whether it is wrong, so that we can determine according to the decisions of the court in these various cases whether or not they have made the return.

[fol. 23-84] Mr. Barrett: Let me ask you this question, has the Supreme Court ever said we haven't the right to act?

Mr. Hicks: The matter has been pending for four years, and for some unknown reason they don't decide it.

Mr. Barrett: It is still undecided.

Mr. Hicks: It is still pending, yes, sir.

Mr. Barrett: When do you expect the Supreme Court will decide the matter?

Mr. Hicks: Well, I can't tell you.

Mr. Barrett: Is it now in issue in any one of the cases?

Mr. Gilbert: It is in the Fayart case; that was a petition in the Supreme Court, that was a petition for mandamus in the Supreme Court in order to determine the items which were under the accounting, and determine

what net proceeds were. That went to the Supreme Court in 1924, and it has been there now three years, and we hope it will be decided, but until it is decided, the decision in the Barrett case stands binding.

Mr. Barrett: Hasn't that question been in issue in one of these previous cases, directly in issue?

Mr. Hornstein: No.

Mr. Barrett: This is the only case in which it has been directly in issue. Has it been argued in the Supreme Court?

Mr. Silber: Argued and submitted.

Mr. Barrett: You mean to say this last issue we are talking about hasn't been decided in three years.

[fol. 23-85] Mr. Hicks: That is right, there is no legal decision.

Mr. Hornstein: It has been held up there. There were a number of items to be determined.

Mr. Silber: When the matter came up we appeared and stated that situation to the Board, and the Board agreed to accept pendente lite this form.

Mr. Barrett: Suppose you are wrong in your contention, have we any right to agree with you on your proposition? Suppose we now say you are wrong, and the Supreme Court then says we are wrong, what harm comes to you?

Mr. Siber: You mean in requiring Form 16?

Mr. Barrett: No, suppose we say to you now, we are not going to take this, we are going according to our own judgment in the matter, and the Supreme Court says we are wrong, you still have your relief. You say you are refusing to do that now which the Board of Review asks you to do, that is, use Form 16.

Mr. Silber: Pardon me for interrupting, but that is not the situation. You agreed with us several years ago.

Mr. Barrett: When did we agree?

Mr. Silber: Mr. Griggs, was it two or three years ago?

Mr. Hicks: We have been here from year to year.

Mr. Barrett: When did we agree?

Mr. Silber: My recollection is it was two or three years ago.

Mr. Barrett: Did we agree on that?

[fol. 23-86] Mr. Silber: To use this affidavit.

Mr. Barrett: Well, you have always had a court reporter here, haven't you?

Mr. Hicks: This is the first time.

Mr. Silber: Form 16 isn't the important thing; the important thing from our point of view is getting a correct tax.

Mr. Barrett: Well, apparently, the taxing body believes that the real important question here is Form 16.

Mr. Hicks: Just what do you mean?

Mr. Barrett: I am talking about the City of Chicago.

Mr. Hicks: And the School Board?

Mr. Barrett: And the School Board.

Mr. Gilbert: Form 16 enables us to determine——

Mr. Barrett: I know what you mean.

Mr. Gilbert: This form doesn't tell us anything.

Mr. Hicks: Now, if I may, I want just a minute, I am not going to quote any law, because I assume you have your own legal advisers and will follow them. Some of you are good lawyers yourselves, so I am not going to quote any law on this. I may quote from some other things.

Now, listen to me, I have got here a number of affidavits filed by the companies where there is double assessments, or the name is wrong, or the amount is different, and I want to file them officially. I assume you don't want them here, but that I should take them to the clerk.

Mr. Barrett: You can file them right here with the chairman.

[fol. 23-87] Mr. Hicks: All right, let them be marked filed, affidavits of protest, objections as to certain rates,—as to certain returns of certain companies for 1927. Then, there are one or two others that I would like to present to you.

Mr. Barrett: Give them to the chairman.

Mr. Hicks: Mr. Chairman, here is a return for the National Board of Fire Underwriters, these affidavits here. Now, they apply to the Oil Association, some of these companies combined under that name, but they do not receive premiums or do they pay taxes.

Mr. Barrett: Now, if there is any of these matters that you agree with him, let's eliminate them.

The Chairman: Why not have them write us a letter, giving us all they claim do not come within the statute here? We will protect you on your rights, or if we differ with you, we will give you a chance.

Mr. Hicks: That will be all right.

Mr. Seeley: No assessments were intended against the Oil Company.

The Chairman: Is there any objection to having this in writing?

Mr. Seeley: Now, there are other matters to be wound up in addition to fire and marine. There were no arbitrary assessments made against insurance companies on net receipts, but the assessments, the insurance companies' representatives and representatives of the City have agreed that there shall be no assessments against them until they have carried the matter to the Supreme Court and have obtained a decision on their liability. What we claim on the part of the taxing body is——

[fol. 23-88] The Chairman: Now, you are taking up a matter that we are perfectly willing to receive when we get to that.

Mr. Hicks: We will reduce that to writing, and put it in.

Mr. Seeley: Now, there is one thing the Board ought to know in order to get this matter clear, and that is that a general order be entered that all assessments for net proceeds be taken out of the regular assessment book and placed in a book by itself.

Mr. Barrett: I think that has been done. I think we have a separate warrant book.

Mr. Seeley: Put them all in a record book.

Mr. Barrett: Well, I know nothing about the assessment, but I know about the order we had last year.

Mr. Seeley: Well, if that order stands, then that takes care of itself.

Mr. Barrett: I presume the Board of Review will follow the best course.

Mr. Hicks: I would like to be heard at the proper time.

Mr. Barrett: Sure, are you through, Mr. Hicks.

Mr. Hicks: No, I haven't started. I want to file these papers.

Mr. Barrett: Now, wait a minute until Mr. Hicks gets through.

Mr. Hicks: I want to file these papers.

Mr. Barrett: Go ahead.

Mr. Hicks: Now, you will remember this thing has been pending a long time. Then another proposition, when we

[fol. 23-89] came up for assessment on 100 per cent premium rate, which these lawyers, Mr. Seeley, conceded was the only legal and proper——

Mr. Barrett: Well that is all past.

Mr. Hicks: Yes, but I am giving you a little history. When that came up we all met here year after year, and you said we were wrong and they were right. We filed objections to those things in writing. Now, so as not to plead them all over again, I now reaffirm and refile the objections which we filed to the assessments, to the action of the Board in levying 100 per cent premium rate.

The Chairman: You mean past or future?

Mr. Hicks: Past and future both.

Mr. Barrett: All our assessments are based on full value.

Mr. Hicks: Yes, I know.

Mr. Barrett: First of all, you still object to future assessments on 100 per cent?

Mr. Hicks: May I get this thought in your minds? It seems to be——

The Chairman: That the legal objections stand as objections to this assessment today.

Mr. Hicks: The notice says that we must file returns with you from each agent from 1870 down to the present time. That is what we are here to argue, to that notice. I wish to file the same objections, and reaffirm them, that we filed for the companies, on behalf of the Great American Insurance Company and all foreign fire insurance companies.

Mr. Gilbert: There ought to be no objection to that.

[fol. 23-90] The Chairman: That can be specified. It is simply a matter of clerical work.

Mr. Hicks: We were a little surprised, if I may say that, to receive that long notice to each company, signed by this Board, wherein and whereby you demanded on the 14th day of November, that on the 27th day of November each and every of the 250 fire insurance companies file a sworn return before this Board. In view of what has gone before, and in view of the decision of the United States Supreme Court in the case of Hanover vs. Carr, we were somewhat surprised, and without wishing to be impertinent in any way, and with all due respect to this Board, based on past history, for the last several years that these companies have gone through, this turns now very strongly to me in the

nature of an attempt to persecute these fire insurance companies in levying illegal taxes against them. I say this defendantially, based upon their history, and the reason of it stands there. The trouble for all of this work stands right there before you, that tax shark, and I can prove it.

Mr. Hornstein: Well, I object to that. I am here representing the City.

Mr. Hicks: Yes, he is an employe of the City. What is the matter is that in the last fifteen years, he has made a search through the County School Board, appointed to take charge of the matter of recovering unpaid taxes——

The Chairman: Mr. Hicks, will you permit just a word? In the first place, whatever you say about the Board, so far as I am concerned, will be disregarded. What you say about Mr. Seeley here or anybody else, I don't see how [fol. 23-91] it could have any bearing on the question of assessments, on the question of law. Let me just give you this. It is apparent that the legal question was raised, that an eminent judicial body, like the Supreme Court of the State of Illinois, decided that legal question one way. We assume that they decided that question according to their understanding of the law. The Supreme Court of the United States decided that question, the highest authority in this country, differently. Apparently, you are not going to impugn the motives of the Supreme Court of the State of Illinois in deciding questions of law as it did decide them, because the Supreme Court of the United States reversed it.

Now, not only that, but there is this here, competent lawyers and well experienced lawyers. Whatever counsel says, so far as I am concerned, will be disregarded, but as to Mr. Seeley or anybody else, it is beside the question. The County or State or municipal bodies are entitled to revenue according to law. Now, that is all I am interested in.

Mr. Hicks: That would be true.

The Chairman: What you think of Mr. Seeley or somebody else, or whatever it is, may be reprehensible out on the corner, and you can call him anything, you can call him a pickpocket, but in here that is beside the question.

Mr. Barrett: Mr. Hornstein, now, going back to this one particular case, the Hanover Insurance Company, they have filed an affidavit——

Mr. Hicks: By their agent.

Mr. Barrett: Now, what do you ask the Board to do? For [fol. 23-92] instance, take this particular one, let's answer that question.

Mr. Hornstein: We are asking you to revise that. We assume that they have followed the condition that they set up in the Barrett case, and have withheld from their gross receipts certain lines of insurance which we contend, in the Barrett case, were ordered to be returned.

Mr. Hicks: Where did you assume that?

Mr. Barrett: Will you please let me ask these questions?

Mr. Hicks: Yes.

Mr. Barrett: And when he gets through, you can talk. What do you mean by assume, have you anything to base it on?

Mr. Hornstein: Yes, we have.

Mr. Barrett: What have you to base it on?

Mr. Hornstein: We have this to base it on, they make a return annually to the State in which they show that they have received various amounts in the State, on various classes of insurance, and none of those classes of insurance are given; that they had been instructed, and are subject to tax, had been instructed by the Supreme Court in the Barrett case that all business of the company should be taxed.

Now, if they had shown there the amounts that they had received on these various classes of insurance, then it would be a perfectly fair assessment and could have been made; in other words, if you put in the amounts that are claimed as deductions for a subsequent class——

[fol. 23-93] Mr. Barrett: In other words, you are claiming this is a deficient return?

Mr. Hornstein: Deficient return, yes.

Mr. Barrett: Now, tell us in detail why it is deficient, what we should do, and why we should do it in this particular matter. Now, let's get down to one case. I am very anxious to know how we are going to correct this at this particular time.

Mr. Hornstein: Well, the Hanover Insurance Company has made a return to the City of Chicago.

Mr. Barrett: When can you show, when can you be ready to show what you wish us to do in this particular case? We can take any one you wish.

Mr. Hornstein: Today is Thursday.

Mr. Barrett: Yes.

Mr. Hornstein: When do you want to meet?

Mr. Barrett: When can you come, so that we can meet?

Mr. Hornstein: I can come in Saturday morning, or Friday afternoon, with a complete analysis of the Hanover statement. I would say this, that I have two of them worked out, not the Hanover Company, now, I can bring those in.

Mr. Barrett: I want the one case that these gentlemen are familiar with.

Mr. Hornstein: Yes. It doesn't mean necessarily the Hanover.

Mr. Barrett: Well, I don't care, the Hanover or someone else.

Mr. Hornstein: All right, we will bring in one.

Mr. Hicks: Are you going to take the Royal?

[fol. 23-94] Mr. Hornstein: No, I will take the Ætna.

Mr. Barrett: Will you be ready on that proposition then?

Mr. Hicks: Now, when, what time and place?

Mr. Barrett: I would like to have this one matter settled.

The Chairman: Well, let's make it Tuesday after Christmas.

Mr. Barrett: Why not tomorrow afternoon at two o'clock?

Mr. Hornstein: All right, tomorrow afternoon at two o'clock I will be here with a complete analysis.

Mr. Barrett: Let's argue one of these out.

Mr. Hicks: Now there is this one other thing; heretofore when there has been the 2 per cent penalty and the 100 per cent question up, which is now decided, the matter was continued over from time to time every year, by you, by us and by the other side, pending final law and decision. Now these decisions have not been finally filed on any question yet; the 100 per cent return is settled but the 50 per cent return is not settled, it is in the Supreme Court now on a motion to vacate. When those questions were up, and I say this with all sincerity for my clients, the Insurance Company, and I wish to reaffirm what Mr. Silber said, they are neither outlaws nor are they tax-dodgers, they want and desire to pay their legal taxes according to law, and in confirmation of that I call your attention, Mr.

Chairman, to the fact that each year while this thing was pending, I stood right here with Mr. Silber and we, with Senator Deneen, offered to your Board the 50 per cent [fol. 23-95] tax which we thought should be imposed, 50 per cent on our returns, and we tendered it to you year after year, but under your advice, whoever you got it from, you refused it.

The result has been that since Seeley accepted his thirty per cent contingent contract, and got them to follow him, the Insurance Companies who wished to pay taxes have been debarred from paying one cent revenue, and you have not received one cent.

The result is that the tax records for the last five years are in such shape, with two columns of assessments, one on full premium of 100 per cent and that divided by two and placed upon a 50 per cent basis, personal property tax, and I sincerely question whether, because of that you can collect any of these five years.

The Chairman: Wouldn't it have been easy for you to tender into the county treasury the 50 per cent?

Mr. Hicks: We tendered it to you.

The Chairman: Wouldn't it be easy to make out this Form 16 and go in and tender the 50 per cent, if you are anxious to pay 50 per cent instead of 100 per cent?

Mr. Hicks: Let me follow that "anxious to pay" with something?

The Chairman: Yes.

Mr. Hicks: We are willing to pay and anxious to pay provided we are paying our legal tax, but by the living Gods if you are going to follow the advice of this "Tax-Shark" through the mill we will take you right on through to the United States Supreme Court, until you see how [fol. 23-96] you like it. Now you can take that and see if you like it.

The Chairman: Who is asking you to pay anything not right?

Mr. Hicks: You are. You are serving us in today for taxes to be returned since 1870.

The Chairman: You mean to say that we have no right to bring this up here at all?

Mr. Hicks: I am not saying that at all. No question about that at all.

The Chairman: If your clients are instructed by you all right—I would stop at one, because so far as I am concerned you might as well talk to the wall.

Mr. Hicks: I assume that.

The Chairman: It is not an argument at all, it is not an intelligent talk at all.

Mr. Hicks: Yes.

The Chairman: If you have a jury here, you might be able to sway them and get some sympathy; but we are here and we are going to decide this according to what we think is the law, regardless of whether Mr. Seeley is a tax shark, or whether you paid fifty per cent or tendered fifty per cent, and we have not had any revenue, is something that is beside the question. Let us get down to business.

Mr. Hicks: Let me give you this conclusion?

The Chairman: You have concluded twice.

Mr. Hicks: No, I have not concluded at all. My conclusion is this, my suggestion to you is instead of placing on the tax books and levying against foreign fire insurance companies imaginary omitted taxes since 1870 down [fol. 23-97] to the present time, and which you ask "why should we not do it," and I admit you are going to do it, you did before, why not wait until the law is settled. As soon as it once passes through you and goes upon your books then there is trouble, there is no money.

Mr. Barrett: But if we did not do some of these things that we have done here you would not be in court at all.

Mr. Hicks: That would be unfortunate.

Mr. Barrett: And then you would not be in the case.

Mr. Hicks: Let me give you the law?

The Chairman: Are you going to argue the case now?

Mr. Hicks: You say I am not talking law?

The Chairman: You are talking now, but a minute ago you were talking to the gallery.

Mr. Hicks: That is a fault of mine.

The Chairman: I do not care for any gallery speech, we were to hear some law to see if we could agree. Are we going to hear you on the law tomorrow afternoon?

Mr. Hicks: I do not think so.

The Chairman: The point that interests me is your argument whether we did or did not do something that may be a violation of the rights of your client. We assume the responsibility for what we have done.

Mr. Hicks: What I was mildly protesting against was that you are starting it all over again.

[fol. 23-98] Let me ask you one thing, there was the Kent case, you got some law there; a mandamus came down for your Board to tax the companies on one hundred per cent return, didn't it? So far as I know, so far as you know that has never been revoked or cancelled, and it stands now.

So, if you are following the law, following the law of the State Supreme Court, why don't you follow that writ, that is open and undecided?

Another thing, let me ask you something—you do not have to answer—is it true that these notices were sent out with the idea in the Board's mind that you would undertake to tax us for omitted taxes from 1870 down to the present time, 57 years.

Mr. Barrett: Get all your facts on that one case, the Ætna case, ready for tomorrow afternoon at two o'clock and let us hear them.

Mr. Silber: All right.

Mr. Seeley: Yes.

Whereupon the further hearing of the above entitled matter was continued to Friday, December 16th, A. D. 1927, at 2 o'clock p. m.

[fol. 23-99] Friday, December 16, 1927, 2 o'clock p. m.

Hearing resumed pursuant to adjournment.

Parties present: Same as before.

Mr. Barrett: This has to do with the matter of net receipts, hasn't it?

Mr. Gilbert: Yes.

Mr. Barrett: Were you going to talk about that this afternoon or argue the personal property matter? What is your understanding on that?

Mr. Gilbert: My idea was to take up the Aetna Insurance Company.

Mr. Barrett: That was on the question of personal property, wasn't it?

Mr. Silber: No, net receipts.

Mr. Gilbert: Net receipts.

Mr. Silber: Under Section 30.

Mr. Hornstein: My understanding in regard to personal property was that you would take into consideration the schedules we filed as to each individual company, we passed them over to you yesterday morning, and that you would let us know in case there was anything you wanted.

Mr. Barrett: Didn't we pick out one particular one that we were going to talk about and examine?

Mr. Silber: You said you would pick out one concrete case, and see how that one concrete case was affected by these questions.

Mr. Barrett: The proposition was, as to whether there was a difference between the schedules which you filed and Form 16.

[Vol. 23-100] Mr. Silber: Form 16, that is what we had in mind.

Mr. Barrett: How are you going to proceed? This is what the board would like to know, as I understand, see if I am right: What the Board has been endeavoring to do and what the taxing bodies have been endeavoring to do, through the agency of the Board of Review, is to force insurance companies coming under this category to file on Form 16, as prescribed by the State Tax Commission. Is that true? Is that a correct statement?

Mr. Silber: That is true, that is one of the questions.

Mr. Barrett: That is a correct statement as far as I go?

Mr. Silber: Almost.

Mr. Barrett: Is it or isn't it?

Mr. Hicks: Except this, it was agreed that case being in litigation you would accept ours.

Mr. Barrett: Excluding that particular proviso of yours, my statement is correct, is it?

Mr. Silber: Yes.

Mr. Hicks: Absolutely.

Mr. Barrett: Now, instead of that, you filed an affidavit which you yourselves have prescribed, is that right?

Mr. Silber: Prepared.

Mr. Barrett: Prescribed, written, prepared, whatever you want to call it, in other words, the affidavit used by all of these companies in this category have not been prepared by the State Tax Commission, not authorized by the-, not [fol. 23-101] OK'd by them, nor have they been OK'd by this Board or the Board of Assessors.

Mr. Silber: That is correct.

Mr. Barrett: They have been written by either the companies or their agents or attorneys. That is true, isn't it?

Mr. Silber: Yes, that is true.

Mr. Barrett: Now then, what this board would like to know is what difference there is between these two, so far as the effect on the valuation for taxation is concerned.

Mr. Gilbert: Well, that is the question we are ready to present.

Mr. Barrett: Is that right, Mr. Litsinger?

The Chairman: Yes, whether it is a difference in substance or in form.

Mr. Barrett: That is it. Before I go further you contend it does not make any difference as to the particular form, the result is the same, as to the insurance companies that you represent?

Mr. Hicks: That is one contention.

Mr. Silber: That is substantially so, excepting for this, Mr. Barrett, that they claim that we have no right, for instance, to deduct the premiums that we paid for reinsurance on some of our risks which we have deducted. Now those taxes come into the public treasury in another way, and that is the thing I would like you to understand.

Mr. Barrett: I understand.

Mr. Silber: That these companies that reinsure make returns of the premiums that they get for that reinsurance. [fol. 23-102] Mr. Barrett: Does Form 16 in its printed conditions give you any space there to claim your exemptions?

Mr. Silber: You mean deductions of that kind?

Mr. Barrett: Yes.

Mr. Silber: No, I do not think it does.

Mr. Barrett: All right, go ahead.

Mr. Silber: I do not think it does.

Mr. Gilbert: This is Form 16 which provides that the company shall make a return, and classify the different kinds of business, so that the Board will know when they

make the return whether they have included all of the kinds of business that the law provides for.

Now, the return as made simply returns so much for gross receipts, so much for expenses, it does not itemize and consequently we cannot tell.

They give us a conclusion. We want the facts upon which the conclusion is based. We want to know the amount of fire insurance, the amount of tornado insurance, the amount of marine insurance, and all of those items so as to see whether they claim that they are not liable for those items or not. So, this return amounts to nothing, it simply is their conclusion of what the net receipts will be if they interpret the law their own way.

Mr. Barrett: Give us each a copy of that form.

The Chairman: Your point is, it is practically an evasion.

Mr. Gilbert: It is an evasion.

The Chairman: By reason of the evasion it is a covering up of the actual results.

[fol. 23-103] Mr. Gilbert: Yes.

The Chairman: So that we could not ascertain, if we wanted to, or whoever was figuring it out, could not ascertain accurately what the results were.

Mr. Gilbert: Yes. The Board of Review has a great deal of business, it has a large amount of work and it is entitled, from every taxpayer and from the insurance companies, among the rest, to the benefit of all of the tax. If you were to undertake on their return to ascertain the true amount of receipts how are you going to get at it? We have a way of getting at it but it is involving an immense investigation. Now, assuming that these gentlemen are wrong in their conclusion, that they won't file this return according to the requirement of the Tax Commission, what is the next program—of course, it is unnecessary for me to tell this Board what the law is because they know more about it than I do, or tell them what their powers are, or what their duty is.

Mr. Barrett: That may not be so. We are willing to learn.

Mr. Gilbert: Well, I don't know; I can tell you what I think.

I think this, that the power to ascertain the amount of net receipts carries with it the power to do everything necessary to arrive at the facts; so you have that power.

Now the Board of Review is not strictly a judicial body, it cannot try all of these cases as they would be tried before a jury. It must try them in a practical manner. If these insurance companies will not make the returns that the law requires, and put upon the Board of Review [fol. 23-104] the necessity of investigating the facts, then the Board must get at the facts in the best way they can.

Now, an investigation has been made by the experts into the taxation of the Aetna Company. In their return made by the county manager, they returned $869,222.06 of gross receipts, not specifying what kind of receipts they are, whether fire or what not; they returned $550,537 as net receipts. They say that is the amount.

Now, not giving us the facts we go to work and find out what the facts are. Here are some of the facts we have ascertained; they have reported to the City of Chicago for the year ending July 1, 1927, which is pretty near the period covered by their net receipts return, $804,000 of fire premiums, after deducting the return premiums.

Now their total gross premiums reported under the net receipts tax question are only $65,000 more.

So, we have to resort to their reports to the State Board. In examining the reports to the State Board we find the following: That for the year ending 1926, which is the nearest we can get at it, their motor vehicle premium receipts were $246,738.28; we find that their receipts from inland navigation insurance, all of which must have been in Chicago of substantially all, amounted to $142,000; we find that their tornado receipts amounted to $254,000, of course a great part of that is in the country.

Mr. Barrett: In a nutshell, with all the information you have we won't try to keep the details in our minds.

Mr. Gilbert: Yes.

[fol. 23-105] Mr. Barrett: If that information you have was to be inserted in the various blanks in this Form 16, what would be the difference between what they return and what return should be as you figure it out?

Mr. Gilbert: As we figure it out, making due allowances as nearly as we can, of course you cannot get at this to a dollar, because you cannot locate all of the insurance.

Mr. Barrett: Yes, we realize that.

Mr. Gilbert: But we make out that the gross receipts for which they should account under their return for this last year are $1,006,113 instead of $869,000. That is a difference of about $140,000.

Mr. Barrett: Let us find out, they may have given according to your conclusions about two-thirds of the whole, is that right?

Mr. Silber: Eighty per cent.

Mr. Gilbert: A little more than that, about 80 per cent.

Mr. Barrett: All right, 80 per cent, or three-quarters of four-fifths.

Mr. Gilbert: Yes.

Mr. Barrett: Does that ratio prevail as to all of them?

Mr. Gilbert: As to all of the companies?

Mr. Barrett; Yes, what is your judgment on that?

Mr. Gilbert: Well, no, I would not say it necessarily did, because in some cases some companies have deducted the reinsurance premiums which we claim they cannot deduct. [fol. 23-106] Mr. Barrett: Let me ask you this, what is your conclusion from your knowledge of the subject as to the average ratio between what they have reported and what they would have reported if they had used Form 16? What is your judgment?

Mr. Gilbert: As near as we can guess, I would say it is about 75 per cent, perhaps less.

Mr. Barrett: In other words, they have reported 75 per cent, in your judgment, of what you believe they should have reported?

Mr. Gilbert: What they should have reported, yes.

Mr. Barrett: And your conclusions come from a 100 per cent basis?

Mr. Gilbert: Yes.

Mr. Silber: Do you understand, Mr. Barrett?

Mr. Barrett: Of whatever the total is.

Mr. Silber: May I point out?

Mr. Barrett: Let me ask a question first, as I want to get some information.

Mr. Silber: Yes.

Mr. Barrett: My questions may not mean anything and they may; but I want to know because I am curious, all of these companies in the past on the basis of your returns on these affidavits paid the tax when bills were issued on your return?

Mr. Silber: No, they have not paid a tax, most of them have not paid a tax.

Mr. Barrett: I am not talking about where we acted.

Mr. Silber: No, I am talking about your question where bills were presented, they have not paid a tax since 1923.

[fol. 23-107] Mr. Gilbert: 1922, you mean?

Mr. Silber: 1922, yes.

Mr. Barrett: Prior to 1922 did you follow the same system that you are following now?

Mr. Hicks: Yes, practically.

Mr. Silber: You mean as to the affidavit?

Mr. Barrett: Yes.

Mr. Silber: Yes.

Mr. Barrett: But since 1922 the bills have been on a different basis?

Mr. Silber: Entirely.

Mr. Barrett: Than your return, isn't that true?

Mr. Silber: The bills have been on two different bases; first on the basis of 100 per cent and second, on the basis of a penalty in addition.

Mr. Barrett: You do not get my point, what I am trying to drive at is this, where we have accepted the returns made by your companies, and they have been spread of record on the warrants and the bills rendered to your companies——

Mr. Hicks: Yes.

Mr. Barrett: Have they paid those bills?

Mr. Hicks: They have.

Mr. Barrett: And you stopped paying them only when these amounts, in accordance with their request, have been placed on the records in excess of what you think should be spread.

Mr. Silber: That is it exactly.

Mr. Hicks: Correct.

Mr. Silber: Now, may I point out the thing——

[fol. 23-108] Mr. Hicks: Wait a minute, he is not through.

The Chairman: May I follow up that question, Mr. Barrett?

Mr. Barrett: Surely, go ahead.

The Chairman: Since 1922 when you did not pay was there any affirmative tender made or statement made in the pleadings admitting certain amounts were due?

Mr. Silber: I would have to think about that because there has been so much litigation—let me answer it as to the Hanover case, because that I know about.

In the Hanover case there was a tender of the amount that would have been due if the tax had been extended on the basis of other personal property, and that amount was the amount that was adopted by the Supreme Court in its last opinion which is now pending on petition for rehearing as being the correct amount of tax.

The Chairman: You do not answer what I want to know, what I want to find out is was there a tender made in court in the pleadings of the amount amounting to a substantial tender?

Mr. Gilbert: No, there was no tender made.

Mr. Hicks: In the pleadings?

The Chairman: Was there an offer made?

Mr. Hicks: No.

Mr. Gilbert: No.

The Chairman: Was there an offer made not technically a tender?

Mr. Hicks: An offer was made.

[fol. 23-109] Mr. Barrett: At any rate let him answer.

The Chairman: Was there an offer made?

Mr. Silber: Not only an offer made but a specific amount fixed as being the amount of tax that we were ready and willing to pay.

Mr. Hicks: In the pleadings?

Mr. Silber: In the pleadings.

The Chairman: And that amount was refused in the lower court?

Mr. Silber: The lower court held that we should pay the amount you fixed.

The Chairman: What do you say the Supreme Court said as to that?

Mr. Silber: The Supreme Court in its first opinion, there was two opinions, the Supreme Court in its first opinion said that was the correct amount extended at 100 per cent.

The Chairman: What is that?

Mr. Silber: Said that was the correct amount extended at 100 per cent, as it was.

Mr. Barrett: What amount?

Mr. Silber: The original amount fixed by the Board of Review.

The Supreme Court of the United States reversed that and held if it was an extension of 100 per cent it was unlawful, unconstitutional and void.

And then the Supreme Court rendered a second opinion in June of 1927, and adopted the figure that we had offered and said that was the correct tax and that was the amount that we should pay and entered a decree.

[fol. 23-110] In effect they reversed with a decree for that amount.

It is now that decree that is under petition for rehearing.

Mr. Barrett: Who filed the petition?

Mr. Silber: We did.

Mr. Barrett: You filed the petition?

Mr. Silber: Yes, we did, because we took the position under the language of the United States Supreme Court decision, which says that after a foreign company has been admitted to do business in the state, it must be placed on the same level with all domestic companies for tax purposes, and as long as domestic companies were not taxed at all, under Section 30 any tax against foreign companies under Section 30 was unconstitutional and void.

Mr. Barrett: Then your position now is as to any offer you made in those pleadings in court fixing the amount, that amount now under your present attitude you would dispute?

Mr. Silber: Yes.

Mr. Barrett: Withdraw it.

Mr. Silber: We would say it is unconstitutional because of Section 30.

Mr. Barrett: I see that.

Mr. Silber: Yes, correct.

Mr. Barrett: Now, you would not be willing to pay that amount?

Mr. Silber: No.

Mr. Barrett: On all other matters, you are taking the position that Section 30 being unconstitutional you won't [fol. 23-111] pay anything under Section 30 as to net receipts?

Mr. Hicks: No, we do not say that.

Mr. Silber: We do not say that. We say that Section 30 furnishes the measure of power of the Board of Review in this matter. That there is no other section of the statute that the Board can act under.

And that Section 30 only requires by its language that every agent make a return of the net receipts, and that the board of assessors should extend that at the same rate as other personal property.

Now, that to our mind, furnishes the whole measure of the power of the Board.

Mr. Barrett: Now, let me ask you this question, so that we get it down to a specific point, supposing the Board of Review should come to the conclusion, after this hearing, for instance, in the Rays Insurance Agency, Matteson, Illinois, Hanover Fire, or just say the agent of your Hanover Fire, I suppose that is the Hanover Fire Insurance Company.

Mr. Silber: Yes.

Mr. Barrett: Most of these affidavits, as I see them, are not drawn up properly.

Mr. Silber: Just for the sake of argument let us assume they are.

Mr. Barrett: Yes. Suppose we should enter of record the amount that is furnished to us by these affidavits, so-called affidavits.

Mr. Hicks: Yes.

Mr. Barrett: And a bill was rendered on them, would [fol. 23-112] you still refuse to pay them on the ground that we have no rights at all under the constitution?

Mr. Hicks: On our return?

Mr. Barrett: Yes.

Mr. Hicks: Yes.

Mr. Silber: I would say this, in answer to that, we would have to wait until the Supreme Court decided the petition for rehearing.

Mr. Hicks: Then we would follow the law.

Mr. Silber: Then we would follow whatever they said.

Mr. Barrett: Then you have come to the conclusion, since 1922—up to which time you paid on the bills rendered, your attitude now is regardless of whatever is done here the matter is subject to litigation to determine whether or not your point is right as to the unconstitutionality of the act?

Mr. Silber: The litigation is practically finished, we have been at it for five years and all that remains to be done is to have the Supreme Court say "no" or "yes", to our petition for rehearing and then the case is ended.

Mr. Gilbert: Now, before we get too far away——

Mr. Hornstein: That is plain, they say they won't pay until they are compelled to.

Mr. Gilbert: Now, before we get too far away——

Mr. Barrett: We are not getting far away, we are getting information.

Mr. Gilbert: Before we get too far away from what the Supreme Court said was the proper amount, let me say the case went up on demurrer and the only thing in the record was the amount.

[fol. 23-113] Mr. Silber: You are not exactly correct, you are 100 per cent wrong.

Mr. Gilbert: Now, I want to set the matter right.

Mr. Hornstein: That is my recollection.

Mr. Gilbert: In the Hanover case and 10 other or 11 other cases the defendants set up that this Section 30 was unconstitutional and void and that they are not liable for any tax at all; then they set up if they were liable the assessment should not be made on the full value, but on a debased value and should be equalized; and then they further set up if it was asessed on the debased value, the tax would be a certain amount.

Now, we answered those bills in each case denying that their estimate of the amount of tax actually due was correct.

We did not admit that, but in the Hanover case which is argued for the purpose of getting this thing before the Supreme Court, and getting a final decision of the validity of the law, we did admit in that case the amount they admitted would be due if the law was constitutional, was correct, but it was not correct. We simply admitted that for the purpose of that one case, and in the other cases we denied it. We answered and admitted that.

Mr. Barrett: Do I understand in the beginning and up until May, 1922, all of these companies were assessed on the assessed valuation as known in our law.

Mr. Hicks: Just like other property.

Mr. Gilbert: Just like other property.

Mr. Barrett: Just like other property?

[fol. 23-114] Mr. Silber: They spread the assessment.

Mr. Barrett: Then this contention came under the special section which is not included in the revenue act, that this should not be spread on the warrant book as assessed

valuations in accordance with personal property assessments or valuations for taxation purposes, but should be spread of record on a 100 per cent valuation and subject to the same rate as personal property.

Mr. Silber: Yes.

Mr. Barrett: Or real estate?

Mr. Silber: Yes.

Mr. Barrett: For instance, in some towns $9 and in some towns $8.57.

Mr. Silber: That is right.

Mr. Barrett: Now, where you have $100,000 of real estate it would be on $50,000, according to our law, but if you had $100,000 in this particular category of taxation it would be $100,000 instead of $50,000.

Mr. Silber: Yes.

Mr. Barrett: Has the Supreme Court decided that question finally now.

Mr. Silber: Subject to the petition for rehearing.

Mr. Gilbert: Subject to the petition for rehearing.

Mr. Barrett: That is, it should be assessed on a 100 per cent basis?

Mr. Silber: No, it should be assessed on the same basis as other property.

Mr. Gilbert: As other property, that is, the 100 per cent this year and prior years one-half and one-third.

[fol. 23-115] Mr. Barrett: I am not talking about this year 100 per cent on all property.

Mr. Hicks: Let me say something that we will all agree on, on the law, we all agree that 100 per cent is out forever, in the future, except as decided by the new law.

Mr. Barrett: The 100 per cent is out by the decision of the Supreme Court of the United States. That is out, we all agree to that.

Mr. Hicks: Yes.

The Chairman: That question could not be before us now because of the particular law that was passed at the last session.

Mr. Silber: That is right.

The Chairman: So we need not argue that any more.

Mr. Silber: That is right.

The Chairman: So it was determined that what we did on that particular basis was wrong.

Mr. Silber: That was what was said.

The Chairman: I am glad to know we were wrong in that, because we are not often wrong.

Mr. Silber: You were wrong in one other thing and that was the Fidelity & Casualty case in the 264th Illinois.

Mr. Hicks: You were wrong there.

Mr. Gilbert: And the Supreme Court was wrong when it made the bull in the Kent case, that made a whole lot of trouble.

Mr. Silber: We are losing track of the big thing that we are all here on, and that is we are here on notice to go back [fol. 23-116] 57 years and file returns. We want to keep the big thing in mind, we don't care about the future, that will take care of itself, because I think the way is cleared for that, but we are here for 57 years in the past.

The Chairman: I think we are getting some place.

Now, let us see if we can analyze this thing a little further.

Mr. Silber: Yes.

The Chairman: In making the demands for the return for premiums for past years, as you put it 57 years, are you asked—is it your contention that we go back and assess or get the figures, so that we can ascertain or obtain figures and make an assessment whether we make that assessment on a 100 per cent basis or a 50 per cent basis.

Mr. Gilbert: You would make that probably on a basis of one-third. You would make it upon the basis of the assessment already made prior to the law of 1898. We all know——

The Chairman: Then, so we agree it would be made according to the holding of the United States Supreme Court on the back premiums of back years?

Mr. Barrett: In other words, they must all be uniform.

Mr. Gilbert: Yes, they must all be uniform.

In other words, for instance, take 1890, we will say you would have to arrive at a guess because it is mostly a guess as to what rate of assessment was put on personal property, but we all know it was not 100 per cent.

The Chairman: Anyway, the principle we understand.

[fol. 23-117] Mr. Gilbert: Yes.

The Chairman: The next question is your point in asking for the fixed net premiums, actual net premiums, for those past years, so that a correct amount may be ascertained and fixed by the Board of Review, so whatever per-

centage of assessment value shall be involved may be fixed, so that an accurate amount and an accurate tax can be fixed. That is the point, isn't it?

Mr. Gilbert: Yes, that is the point.

The Chairman: What is your position with reference to the return claimed to have been made by the various insurance companies covering these past 57 years, on which according to those returns the companies claim they have paid the taxes.

Mr. Gilbert: Our contention is that those returns were wrong and of course as the statute of limitations never runs against the state we have a right to go back any period. The Supreme Court has decided that.

The Chairman: Then your further point would be, assuming in 1890 a return was filed of net receipts of $100,000, and a tax paid upon that, upon whatever basis there was, and then upon an investigation it should be disclosed that the amount should have been $200,000 instead of $100,000, you then claim that we ought to assess the difference?

Mr. Gilbert: You ought to assess the excess and assessed by a basis of valuation that was then in use, say one-third.

Mr. Silber: In spite of the fact if you were called on today, acting under the Revenue Act to assess so-called [fol. 23-118] omitted property of $100,000 as credits for 1890, that we will all agree you would have no power to do it because you had already assessed credits for that year and there is no claim of fraud in this case, never has been, nobody has ever claimed the insurance companies consciously tried to cheat the public revenues of a dollar.

Mr. Gilbert: You may think that.

Mr. Silber: You never claimed it in any pleading that you filed.

Mr. Barrett: Well, that does not make any difference here.

Mr. Silber: No, but they never claimed it in any pleading they filed.

The Chairman: Well, we will take it for granted that they did not attempt to deliberately cheat.

Mr. Barrett: I think you are trying to get an argument.

Mr. Silber: No, I am simply telling you the principle of law that I think applies to this proposition.

Assuming you are acting under the Revenue Act, and that is the broadest assumption you can make, because

under the Revenue Act you have absolute power as a Board of Review to assess omitted property, but the Supreme Court says in order to constitute omitted property all of the classification of that property must have been omitted from the return or from your action of that year.

From the year 1890 you did assess net receipts for the Aetna Insurance Company, which went through and was paid, and therefore you could not if you were acting under your original jurisdiction assess anything as omitted property after that year.

[fol. 23-119] Mr. Gilbert: That is not the law.

Mr. Silber: That is the law.

The Chairman: Isn't there this distinction, in the one case you refer to omitted property and in the other case you are talking about omitted receipts?

Mr. Silber: Yes, but I am assuming you have broader power under the Revenue Act as to omitted property than you have under Section 30, because under Section 30 you have no power.

The Chairman: Would we have to determine according to your argument that omitted receipts under Section 30 of the Revenue Law are in legal effect omitted property under the general revenue law statute?

Mr. Silber: I think you would.

The Chairman: We would have to take some responsibility in determining that.

Mr. Silber: I think you would.

The Chairman: Just one more question, I think we are getting to where I at least am beginning to see a little law.

Mr. Silber: Yes.

The Chairman: If the Supreme Court says yes—you say it will say yes or no.

Mr. Silber: Yes.

The Chairman: If the Supreme Court should say yes would that mean that Judge Gilbert's contention would be correct, that you would then—that the Board would then have a right to go into these past years and get a corrected amount?

[fol. 23-120] Mr. Silber: No, it would be incorrect.

If the Supreme Court of Illinois said yes, the tax should be spread on the basis of other personal property, then our

position is that you have no power under any construction of Section 30 to go back and do anything for past years. You cannot change an entry in the books that have been closed and sent to the collector for 1923. You haven't the power. I say you have not, because that is merely my personal opinion.

The Chairman: I think you are arguing the second branch of it—I am——

Mr. Silber: Maybe.

The Chairman: I am trying to remain on the first branch.

Mr. Silber: Let me remain on it, too.

The Chairman: As I understood it awhile ago the statement was made by one of you men, that it was yes or no up to the Supreme Court on the petition for rehearing.

If the Supreme Court decides your way, which means no, then I take it we could not collect the tax at all.

Mr. Silber: That is correct, that is our belief.

Mr. Hicks: That is right.

The Chairman: But if the Supreme Court decides yes, that is what I am trying to find out, forgetting for a moment the United States Supreme Court decision about modification or construction of Section 30, whether unconstitutional or what it is, omitting that for a minute, but under the Supreme Court ruling in Illinois, would you say then, [fol. 23-121] when you said yes before, that does not mean that we could go back the past 57 years and make a reassessment?

Mr. Silber: That is what I mean exactly. You could not do it.

The Chairman: Those are legal questions that I think we can tie up with ourselves and analyze and simplify the whole thing.

I would like to go along and understand the law as we go along.

Mr. Silber: Well, I have tried to help in any way I can because I have gone into the subject quite extensively for five years. I have tried to see whether I was wrong or right, and I think I am right.

When acting under the Revenue Act, when you go into the past years and give yourselves the broadest construction you have under the Revenue Act, you could not even tax omitted property and omitted receipts because we made

returns and paid taxes in those years on receipts, if I am right.

Mr. Barrett: I will tell you I am not so sure you are wrong in that matter. I don't know anything about it, but I would have to be argued into a decision that if a return was made we would have a right to assess omitted property.

Mr. Silber: For a different amount.

Mr. Barrett: Yes, that would open up a pretty big subject.

The Chairman: I think we are getting right to the starting point, why I asked the question awhile ago, whether omitted receipts are to be considered omitted property.

[fol. 23-122] Mr. Hicks: Will you read me that question?

(Question read as above recorded.)

Mr. Silber: I can cite you to the 11th Ill. on that and give you a little written brief.

The Chairman: Whatever authorities you have you may submit them.

Mr. Silber: I have them for you.

Mr. Barrett: All we are doing at the present time, so far as my present attitude is concerned is considering the 1927 returns. That is all I am thinking of at this particular moment. Is your 1927 return on Form 16?

Mr. Silber: May I make this suggestion on that particular point, it is now our earnest desire that the tax that is spread by this Board shall be a tax that all of us, if possible, can agree is the legal tax that must be paid, and stop any further troubles with the taxing bodies.

Mr. Barrett: Repeat that statement.

Mr. Silber: I say it is our earnest desire that the tax this Board spreads for 1927 is a tax that we all can agree is the legal and proper tax.

In previous years when we have filed the same return we have been met with a 50 per cent penalty merely because we did not file in Form 16, while the matter had been in the Supreme Court to decide that issue.

I think in the first instance any question of a penalty should not be in this tax.

Mr. Barrett: I will say this, if your return was on Form 16, in accordance with the statement by counsel for the

city, my inclination would be to spread it of record as you [fol. 23-123] have returned it. That would be my personal inclination, but we have as I view it from an order directed by the Supreme Court a duty to perform with reference to Form 16.

Mr. Silber: I tried to point out yesterday that the Board of Review was not before the Supreme Court in the case in which that language was used, and all the Supreme Court said in this case was it was within the province of the State Tax Commission to adopt a uniform form in the interests of having general information of the kind that was on Form 16. It did not say that the Board should insist or might insist or should have power to insist on Form 16.

Mr. Barrett: Wasn't there a mandamus petition?

Mr. Silber: Yes, there was a mandamus petition merely to spread the next tax receipts at 100 per cent. That was all that was the question in that case.

The use of Form 16 was something that was obiter practically, in the decision of the case.

Mr. Gilbert: I would like to make a suggestion on the other point.

The Chairman: While I have the question on my mind, following Mr. Barrett, a minute ago I understand you to say as to the 1927 tax you are making returns?

Mr. Silber: We made them, we made them.

Mr. Barrett: They are making them in these affidavits.

Mr. Hicks: We made them.

The Chairman: Are you making them regardless of your position as to the United States Court decision, if Section 30 is void?

[fol. 23-124] Mr. Silber: We have made them in spite of that, made them and filed them with the assessors.

The Chairman: You made your returns on the basis or do you make your returns now in the nature of personal property return or under Section 30, or either of them?

Mr. Silber: Under Section 30. The net receipts as required by Section 30.

We are giving you the full actual net income under Section 30; the only difference between the taxing authorities and ourselves is that we are deducting certain items that we are contending in the State Supreme Court that we are entitled to deduct, such as a proportion of general overhead in Cook County agencies; we are deducting re insur-

ance premiums for the re-insurance company where it files its own returns, and pays taxes on those receipts.

In other words, we are not beating the tax authorities by this method out of a dollar of net receipts. They are getting a full return on all of them.

Mr. Barrett: This of course is understood, there is not anybody don't, the Supreme Court understands it and everybody understands it. There is nobody that is assessed 100 per cent, what the law says they should be assessed, and everybody understands this. Mr. Litzinger made the statement and I made the statement if that were the case we believe here as public officials acting for the good of both the people and the taxing bodies we would cause a panic in our community due to the high rates.

Mr. Gilbert: Yes, and ruin a lot of people.

Mr. Barrett: We must be fair, of course, as to individuals and as to business.

[fol. 23-125] When you say that they average about 75 per cent you have given me a new angle and a new thought.

Mr. Gilbert: Well, I want to answer some of the suggestions made.

Mr. Barrett: Of course I am only talking for myself. I am not endeavoring to express the sentiment or the idea of any other member of the Board of Review.

The Chairman: May I follow that down just a minute and suggest this, if the point of difference now in 1927 is the figures you get from the reports to the city and the state, and their returns as shown here, could you by an auditor get the amounts of difference, the difference, the difference in amount each company; could that be ascertained without any very extended loss of time?

Mr. Gilbert: Well, it might be if we know the amount of each class of insurance.

The Chairman: Well, I understood you could get that from the state.

Mr. Silber: No.

Mr. Gilbert: No, we cannot.

Mr. Silber: You see the difficulty with Judge Gilbert's position is this, he is trying to compare a report filed for all the business that we do in the state, at Springfield, with a report filed here of the business we do in Cook County.

Now, you cannot possibly check up one against the other, because we have thousands of agencies outside of Cook

County in the state, and the state report is the sum total, net receipts.

Mr. Barrett: Is there any way from the general report [fol. 23-126] in Springfield to differentiate between the business in Cook County and the business down state?

Mr. Gilbert: I think so, I think we can get at it; if we cannot get at it, whose fault is it? It is their fault.

Mr. Barrett: I know, but if you tried to find out a reason for everything in the world you would be pretty busy.

Mr. Gilbert: Let me make some suggestion, there has been some statements about the law which have not been correct.

Mr. Hicks: Before you get to the point——

Mr. Gilbert May I say this?

Mr. Hicks: The Board has the point, and I think it is true, and they are going to look it up. They say one thing——

The Chairman: You are not agreeing with us.

Mr. Hicks: I am struggling that way, closer than I was.

The Chairman: May I get this one question in, something keeps bobbing in my mind and I try to satisfy myself by asking these question, it does not indicate my position at all, either one way or the other, I want to ask it for the purpose of some light; suppose on the petition for rehearing, which will determine something, I take it, and probably settle some of the matters involved here, especially as to the past years, suppose—that—and I want Mr. Barrett to hear this—suppose we should defer any action on the matter, all matters except 1927, and wait until the Supreme Court decides the question now up for rehearing, [fol. 23-127] how much would anybody be prejudiced if we deferred action?

Mr. Gilbert: Well, we would not be prejudiced if they decide at the present term, because they will decide the latter part of next week, if they decide it at all.

The Chairman: In other words, if they decide it in the December term of the Supreme Court we will all know about it by that time and this work will not be completed until after the first of the year.

Mr. Gilbert: That is true.

Mr. Silber: Then if they decide it at the February term that will be in sufficient time.

Mr. Barrett: I will say to you gentlemen representing the city my own inclination would be, due to the fact the various taxing bodies are clamoring for revenue, more policemen and so forth, for the purpose of taking care of various vast improvements, improvement bonds and interest due, that if these companies paid on a 75 per cent basis they would have no quarrel with me providing they would say they would pay if we spread it of record on their returns, in view of the fact that you agree on a 75 per cent basis.

The Chairman: If your 75 per cent was 75 per cent of the correct amount.

Mr. Barrett: I am asking them that and they say it is.

Mr. Silber: We say it is much more than 75.

Mr. Barrett: Taking their basis.

Mr. Silber: It cannot be less than it is, much more.

[fol. 23-128] Mr. Gilbert: That is their opinion.

Mr. Barrett: I want to say, I am expressing that opinion only as one member of the Board and I don't know how Mr. Litsinger feels about it. The——

The Chairman: I think you have some influence with the other members.

Mr. Barrett: I do not claim to have, but I am only expressing my thought as a matter of fairness, due to the fact that we have had some experience on this board in relation to these various matters.

Mr. Gilbert: I would like to supplement what counsel has said on the question of the right.

Mr. Barrett: Let me follow that up, but as I understand it you say even on the basis you file you still do not believe you are taxable on that amount under the present law.

Mr. Silber: We think we are providing only that Section 30 is constitutional.

Now, there is the question that arises only on this basis, the Supreme Court of the United States said this, wherever a foreign corporation comes into Illinois and pays it privilege tax to do business in the state, from that moment it must be placed on the same level as a domestic corporation in the state.

Now, our contention has been these domestic corporations paid no net receipt tax at all, the foreign corporations pay 2 per cent privilege tax on all of their premiums for the right to come into the state and do business; in addi-

tion they pay a fire tax, and a fire marshal tax, salvage corps tax and a lot of other taxes. All of these taxes they have to pay.

Our position is because domestic companies were not re- [fol. 23-129] quired to pay those taxes at all, when the Supreme Court said all companies must be placed on the same level, that Section 30 must be necessarily unconstitutional because it did not put the two companies on the same level, because it is an arbitrary discrimination.

If we are wrong on that and the Supreme Court says we are wrong in the petition for rehearing, all right.

Mr. Barrett: Is that involved in this?

Mr. Hicks: Yes, nothing else.

Mr. Silber: That is the very thing.

Mr. Barrett: Is this one petition?

Mr. Silber: Yes.

Mr. Barrett: And it may possibly be decided in this term.

Mr. Silber: It may.

Mr. Barrett: All right.

Mr. Silber: That is the only reservation that we have on the question.

Mr. Hicks: That is all.

Mr. Barrett: Anything else you want to listen to?

The Chairman: I do not think so. I think if it is possible for us to learn the law I do not think there is any necessity for doing something here and then having to retrace our steps.

Mr. Barrett: Let us wait, anyhow, until this particular session of the Supreme Court adjourns.

Mr. Gilbert: Will you permit me to make a suggestion on one of the points?

Mr. Barrett: In the meantime we won't act on it. Now, [fol. 23-130] let us wait and be courteous to the other gentlemen.

Mr. Gilbert: Let me make a suggestion on one of the other points. It has been claimed here because assessments on net receipts have been made in the past, no matter whether wrong or not, the Board is powerless to go back and assess omitted net receipts.

There are decisions of the Supreme Court, there were early decisions which seemed to indicate that that was so,

that if there was any assessment on a particular item, assessment of bonds, there could not be a reassessment of after discovered bonds, but the Supreme Court has gone back on that to the extent of saying that if the discrepancy is large it may be corrected, and furthermore, this Board is bound by the decision in People against Barrett. They say on the other side that you were not parties, but the Board of Review is bound and is bound to take the law as the Supreme Court laid it down.

Mr. Barrett: To-wit.

Mr. Gilbert: The Supreme Court in that case where there had been assessments of net receipts held that you could go back and assess omitted net receipts.

Mr. Barrett: That we could.

Mr. Gilbert: That you could.

Mr. Barrett: Yes.

Mr. Gilbert: Of course, if you could it is your duty to do so under the statute if a proper case is presented.

Now, as far as the meaning of the decision of the Supreme Court of the United States is concerned, you can read it, there is the opinion and it is plain.

[fol. 23-131] Mr. Barrett: I will read it.

Mr. Gilbert: So far as waiting until the Supreme Court of Illinois has decided the petition for rehearing, if they do it this term there is certainly no objection to that.

Mr. Barrett: That may clarify the atmosphere a great deal.

Mr. Gilbert: If they deny a rehearing that ends it.

Mr. Barrett: So far as I am concerned when anybody makes a 75 per cent return here——

Mr. Hicks: It does not hurt you at all.

Mr. Barrett: It does not hurt me at all.

Mr. Gilbert: Here is the difficulty.

Mr. Barrett: I am really astounded at your admission it was 75 per cent.

Mr. Silber: As a matter of fact it was very much more.

Mr. Seeley: You understand of course——

Mr. Barrett: Yes, I understand him, I do because he talks English.

Mr. Seeley: And I talk English too.

Mr. Gilbert: These figures given me show about 75 per cent.

Mr. Barrett: I am taking your word for it and they are your adversaries.

Mr. Gilbert: As I understand it, when the Board arrives at a valuation it generally reduces it some, for instance, if I report property of the value of $100,000 you would probably put it down to seventy-five.

[fol. 23-132] Now, that is all right, because that is a valuation on which you exercise your judgment, and when you exercise your judgment, why, that is the end.

Now, this is no valuation at all, we are entitled to have put on the lists, the law says they shall put on the lists the entire net receipts. Now, when they put those on the lists, you assess the net receipts and then the question is whether you can reduce them by 75 per cent, or not.

Mr. Barrett: Now, they have not admitted at all that they were not 100 per cent, but you say they are at least 75 or 80.

Mr. Gilbert: What I am getting at is this, it is the duty of the Board to put on the list the full amount of the net receipts. That is the law. Now, when they are put on, if you choose to say we will debase the value because other personal property has been debased, that is your privilege, but it is our right under the law to have the correct amount of the net receipts put on the list.

Mr. Hicks: That is true.

Mr. Silber: And that is what we have done with these affidavits.

Mr. Gilbert: We say not.

Mr. Hicks: There is a little more to that statement, because each of them carry an oath before a notary public, but each of them swore that it was the full return.

Mr. Gilbert: They do not tell anything about it, and we should be given an opportunity to get at the truth.

[fol. 23-133] Mr. Barrett: Many oaths are given with easy consciences.

Mr. Silber: Our books are there to back up these returns.

The Chairman: Many oaths are easily swallowed.

Mr. Gilbert: Then, as to the past years I want to make another statement for the information of the Board, that these companies, many of them have omitted from their net receipts fire losses, re-insurance, and any other items they were not entitled to at all, and we are entitled to have that much of the assessment corrected at least. And in some years there was no assessment at all on anything, so the Board under this situation as it exists is at least bound

to examine into the past returns and see whether large amounts have been omitted and have never been taxed.

Mr. Barrett: Isn't it true, also, that same statement of yours applies so far as the schedule of personal property by the individual or individual corporation is concerned, within our jurisdiction, that the law says that they should file schedules.

Mr. Gilbert: If you want my opinion on that subject?

Mr. Barrett: I mean aren't they analogous?

Mr. Gilbert: I think the whole——

Mr. Barrett: Aren't the cases analogous?

Mr. Gilbert: I think the whole system of taxation is an unmitigated fraud.

Mr. Barrett: That is all right. I am not asking your opinion about that; I am asking you whether or not under [fol. 23-134] our present system they are not analogous.

Mr. Gilbert: I don't know; I would not want to express an opinion on that subject.

Mr. Barrett: You do not have to make a very deep research for that. They are analogous, aren't they?

Mr. Gilbert: Of course I would be willing to concede——

Mr. Barrett: If it is not done, then we have a right to use our wits to find out what ought to be done. That is true, isn't it.

Mr. Gilbert: To a certain extent.

Mr. Barrett: In other words you cannot force a man today to file a schedule. Nobody can do that.

Mr. Gilbert: You cannot very well.

Mr. Silber: You can force us to do it.

Mr. Barrett: In other words, you do not file one, do you Mr. Gilbert?

Mr. Gilbert: Yes, I do. I file a schedule every year, a sworn schedule.

Mr. Barrett: Every year?

Mr. Gilbert: Yes, I do.

Mr. Barrett: Then you are an exception.

Mr. Gilbert: Yes, I do, and it is not very large, either.

The Chairman: I want to ask one question here, I want to be clear on, in this Section 30 the title to the act is "An Act to incorporate and govern fire, marine and inland navigation insurance companies, etc." Is it your position [fol. 23-135] and is it clear that insurance outside of fire, marine and inland navigation like tornado, hail, sprinkler

leakage and all that, the premiums coming from that class of insurance, is that subject to tax?

Mr. Gilbert: It is subject to the net receipts tax.

The Chairman: Has that distinction been raised?

Mr. Silber: It has been raised and the Supreme Court has said that after those different classifications and companies were admitted to do business in the state the provisions of Section 30 did cover those items, not casualty, for instance, but tornado, sprinkler, explosion and other things.

Mr. Gilbert: They are all in by separate statutes.

Mr. Silber: Now, we do not raise any question on that. I think you ought to know one thing more before we close this hearing, and that is that 300 suits are pending in the courts of this county for an accounting from the companies on the taxes pending before you, for the same taxes, and they are now asking you to go back and reassess.

In these suits they take the position that a court of equity has power to make an assessment and enter a decree against us for those back taxes, and further say that if we do not pay them to cease our right to do business in this county. I think you ought to know that.

Mr. Gilbert: What do you contend?

Mr. Silber: We contend that there is no equity, no jurisdiction in a court of equity to do that.

Mr. Gilbert: Clear.

The Chairman: The only thing we can say is that some lawyers are monopolizing all of the business.

[fol. 23-136] Mr. Silber: I wanted you to know what is happening there.

Mr. Hicks: But they are doing it under protest.

Mr. Silber: They are dragging us into court on 300 cases and they are trying to do in court what they are asking you to do.

Mr. Hicks: Yes, and they are all pending.

The Chairman: That is all.

DECEMBER 28, 1927

There were present the following:

Commissioner Charles V. Barrett.

Hon. Samuel A. Ettelson, Corporation Counsel, by Mr. Hiram T. Gilbert, appeared on behalf of the City of Chicago.

Messrs. Hicks & Folonie, by Mr. Paul H. Heineke, appeared on behalf of certain insurance companies.

Messrs. Silber, Isaacs, Silber & Woley, by Mr. Samuel Levin, appeared on behalf of certain insurance companies.

Mr. Barrett: Who is here in response to the notification about these insurance companies?

Mr. Gilbert: I am here.

Mr. Barrett: Is the other side represented?

Mr. Gilbert: Yes.

Mr. Barrett: Is Mr. Silber's office represented here?

Mr. Levin: Yes, but Mr. Silber is in Washington.

Mr. Barrett: Are your familiar with the subject-matter? [fol. 23-137] Mr. Levin: Only in a general way.

Mr. Barrett: Whom do you represent?

Mr. Heineke: Hicks & Folonie, and Mr. Hicks is sick in bed.

Mr. Barrett: Do you understand the matter?

Mr. Heineke: No.

Mr. Barrett: What is your idea as to the Supreme Court denying the petition for rehearing?

Mr. Gilbert: They sustain the law——

Mr. Barrett: That is, on the question of net receipts?

Mr. Gilbert: Net receipts, and also the net receipts must be entered on the tax list, but there is no valuation of net receipts, but they are entered on the tax list at the actual amount, and they are debased like other personal property.

Mr. Barrett: Of course, in the past we have had the controversy as to whether they should be taxed on the basis of 100 per cent, which we call the full value, or on the basis of the assessed value, according to the provisions of the statute.

Mr. Gilbert: As I say, the net receipts are entered on the list at the full amount.

Mr. Barrett: Yes. Of course, this year they are all entered on a 100 per cent basis.

Mr. Gilbert: No, we claim they are only entered for about 75 per cent.

Mr. Barrett: You don't understand, we make 60 per cent for equalization; they are put on at their full value.

Mr. Gilbert: Yes.

[fol. 23 138] Mr. Barrett: All right, the Supreme Court has upheld what we have done in the past, except that we put them on at 100 per cent value and it should have been a 50 per cent, is that right?

Mr. Gilbert: That is right.

Mr. Barrett: All right, and if we put them on in accordance with their return to you, my understanding is that they have given practically 75 per cent return of the full value?

Mr. Gilbert: We think that is about right.

Mr. Barrett: You think that is about right?

Mr. Gilbert: Yes.

Mr. Barrett: In other words, it is your opinion that if they had filed it on Form 16 in accordance with the way you would like them to do it, as representing the Taxing Body of the Municipality, it is your opinion that there would probably be about a 25 per cent increase to make it 100 per cent full value, as their return?

Mr. Gilbert: Yes.

Mr. Barrett: Now, what did the Supreme Court say with reference to their filing Form 16?

Mr. Gilbert: They haven't said anything since the Barrett case.

Mr. Barrett: And the Barrett case said they should?

Mr. Gilbert: It said that was a proper form.

Mr. Barrett: Now, it is results that you are asking for?

Mr. Gilbert: That is what we want, results, without too much trouble.

[fol. 23 139] Mr. Barrett: Is there anything else now in contemplation to be litigated on these matters, if we should enter on our warrant books the amounts that they have given to you in their affidavits? As I understood it, they said there was something else to be litigated the other day.

Mr. Gilbert: Not on our side. They want to contest past years, that is, years prior——

Mr. Barrett: I am not talking about that; I am talking now on this particular year's assessment.

Mr. Gilbert: As I understand it, they contend the Act is unconstitutional.

Mr. Barrett: Now, what is there on that point?

Mr. Gilbert: Their contention is that the entire act is

unconstitutional, that the Supreme Court of the United States has practically so held.

Mr. Barrett: On the basis of what?

Mr. Gilbert: Because it is in violation of the Fourteenth Amendment.

Mr. Barrett: That there is a discrimination?

Mr. Gilbert: Yes.

Mr. Barrett: Do they claim there would be a discrimination in the matter even under the basis of our present law?

Mr. Gilbert: No.

Mr. Barrett: In the past, of course, it was understood that they should go in on a 100 per cent basis because it was a specific statute, in the nature of a tax, rather than an assessment of personal property. Now, of course, that is all eliminated. All property now goes in on a 100 per cent [fol. 23-140] basis, which, of course, affects the bonding power. Now, with that, so far as our present assessment is concerned, in your opinion, eliminating it from the possibility of being unconstitutional——

Mr. Gilbert: There is no contest about that. If there is to be an assessment at all, it is to be on full value.

Mr. Barrett: In accordance with other personal property?

Mr. Gilbert: Yes, exactly.

Mr. Barrett: Now, they made returns on affidavits they prepared for themselves. You have insisted that they should make returns on Form 16, which they have refused to do. We at one time were mandamused for the purpose of having the return on Form 16. Now, since that time we have endeavored to force them to do it, keeping good faith with the order of court. They have refused to do it. In your opinion, is there any method by which the Board of Review can force them?

Mr. Gilbert: The only method is by penalizing them.

Mr. Barrett: All right, how can we penalize them?

Mr. Gilbert: Just as you could penalize anybody who comes in here for relief.

Mr. Barrett: In other words, if we cite you in for the purpose of raising the valuation of your personal property or showing cause why it should not be raised, if you don't give us any information, we take the best information we can get and make the assessment?

Mr. Gilbert: Yes, and you can add a penalty, too.

[fol. 23-141] Mr. Barrett: You mean a 50 percent penalty for failure to file a schedule?

Mr. Gilbert: We don't claim that.

Mr. Barrett: I know you are not asking that. All right, we have gone through all that. We have cited them in, and they have given us an affidavit which, of course, isn't in conformity with Form 16. There is no physical way by which we can force them to file that particular kind of schedule.

Mr. Gilbert: No practical way.

Mr. Barrett: No practical way to do it. Now, after that is all exhausted, we find they have returned what would appear to be a 75 per cent return of the true net receipts. Now, if we put these figures on our books at 75 per cent basis, what is your opinion as to that?

Mr. Gilbert: I think that would be about right, provided it isn't debased after it is put on.

Mr. Barrett: Well, we will not do that. Well, whatever we put on will be in accordance with the schedule they file, with the affidavit they file.

Now, is there anything else you gentlemen would like to say to me? You have listened to what I have said. Is there any enlightenment you can give me? I am talking for the purpose of the record you are making here. I am talking now to the attorneys who represent these various insurance companies.

Mr. Heineke: Mr. Barrett, I think the record should show that notice was given to the insurance companies by telephone this morning, and that Mr. Hicks is sick in bed and that Mr. Silber is in Washington.

[fol. 23-142] Mr. Barrett: No, notice was given to the insurance companies some time ago in accordance with the law that provides for notice, and they were in here. This is in the nature of a subsequent hearing which we agreed to have after the Supreme Court had handed down their decision on the petition for rehearing, which they have done, and denied it. I took it for granted that they had some hope that the Supreme Court would grant the petition for rehearing, which would again leave the matter in a position where we wouldn't know what to do. Now, then, the petition for rehearing which they filed has been denied, leaving the law as per the opinion handed down some time ago. I

am sure that the Board, under those conditions, will do as I said here a moment ago. That, of course, will come to the Board's attention very soon, and we will give it immediate action.

Now, is there anything else you are interested in regarding insurance matters?

Mr. Gilbert: Nothing that I know of.

Mr. Barrett: I don't think these gentlemen are interested in the personal property feature of insurance companies.

Mr. Gilbert: Well

Mr. Barrett: You may say to the Corporation Counsel, that we have disposed of this matter, but if there is anything else they want to say to us, we are here, but we want to get it immediately.

Mr. Gilbert: All right.

Whereupon the hearing was adjourned.

[fol. 23143] Herman Seeley, recalled for defendant, testified as follows:

Direct examination:

By Mr. Silber:

There were four separate notices that went out to the insurance companies from the Board of Review to appear on December 15, 1927, in connection with these omitted net receipts. One of them dealt with 1869 to 1898, one with 1898 to 1922, another with 1922 to 1927, and the fourth was for the current year of 1927. These notices were prepared by me and submitted to Mr. Gilbert, who submitted them to the Board of Review, which in turn referred them to Mr. Massena; after that they were issued. These were the only notices sent out.

The only contract that I have for contingent fees is the one executed with More in regard to the county. I haven't it with me now, but I can get a copy of it. I have no copy whatever of the contract with the City.

STIPULATION

Stipulation between the parties providing as follows:

1. That defendant may introduce any evidence which would be admissible in equity under appropriate pleadings.

2. That defendant may introduce any evidence which would be competent in support of a bill to restrain the collection of the taxes, the plaintiff waiving any objection to the jurisdiction of the court to entertain and give effect to any equitable cause of action or defense in favor of defendant.

[fol. 23-144] 3. The defendant shall have the right to have the court enter such judgment or decree as may be appropriate to and in conformity with the evidence so that the defendant can have the same relief to which it would be entitled under a bill to restrain the collection of the taxes.

4. That defendant may offer evidence proving that (a) the assessment of the taxes by the Board of Review was fraudulent and void, (b) that the Board of Review had no power to assess net receipts taxes for the years in question as omitted net receipts or as omitted property taxes, (c) that the omitted net receipts taxes assessed for the year in question were void and uncollectible, (d) that Section 30 of the Act of 1869 is unconstitutional and void, and (e) that the collection of the taxes in this case should be perpetually enjoined.

5. That a consideration of the stipulation is that the defendant waives trial by jury.

6. That either party can have the right to offer testimony proving or tending to prove any fact within the issues made by the pleadings not otherwise expressly provided for.

Stipulation setting forth in substance that during the years in question various non-incorporated foreign associations, various individuals, various so-called Lloyds, and various domestic fire insurance companies were lawfully engaged in transacting the business of fire, marine and inland navigation insurance in Illinois in competition with

the defendant and all other foreign incorporated fire insurance companies during that period lawfully transacting the business of fire, marine and inland navigation insur-
[fol. 23-145] ance companies, and that said non-incorporated foreign associations, individuals, Lloyds and domestic insurance corporations during said years were not assessed for taxation upon their several net receipts covering fire, marine and inland navigation insurance risks assumed by them in Illinois, or upon any real or personal property other than net receipts like all other property owners and taxpayers, and that said foreign stock fire insurance companies were assessed for taxation upon their net receipts derived from such competitive business; that foreign casualty insurance companies also carried on such competitive business and were not taxed on their net receipts derived therefrom.

W. H. Roadifer, called for defendant, testified as follows:

Direct examination:

I have already testified in this case on behalf of the National Fire Insurance Company, the Mechanics and Traders Insurance Company and the Transcontinental Insurance Company.

The gross receipts of each of the returns for each of the years in question of those companies as filed were correctly made as far as the amount of the gross receipts from fire, marine and inland navigation insurance premiums were concerned. The return showed correctly the amount of gross receipts and the expenses that were deducted in each year of each company for each return. Those expenses were correctly set forth in our return for each company; that is, to the best of our ability to produce them. I was personally in charge of that work. The net receipts shown [fol. 23-146] by each return for each of those companies and each year as filed were the correct showings of the actual net receipts from those sources from each company for each year. I was controller of the company during that period in charge of the accounting.

The National Fire Insurance Company had office furniture and fixtures on which they made a separate return

and paid taxes. The only thing unpaid and the only property assessed by the Board of Assessors and the Board of Review during those five years was the actual net receipts and nothing else excepting the tangible property I have testified to.

Cross-examination:

I know from the records that the gross receipts which I put in those returns were the only gross receipts received. The records were those kept by an insurance company, which are registers or journals which showed the business in the various agencies and stated the business that our company figured in the agencies of Cook County. I did not keep the books with my own hands. I have been during that period comptroller for many years, I have been the chief accountant and am still the chief accountant. I am familiar, absolutely, with the returns from the books and records of our office. I am certain they are correct so far as the books show, and the books show the correct business.

The making up of the statement from the books was done by employes under my direction. I have every reason to believe that it was absolutely prepared in a correct manner.

We never made an reported figures direct to the Board [fol. 23-147] of Review. The following form was used by me:

"Agent return of Alexander Wolf & Company, 175 West Jackson boulevard, Chicago, Illinois, National Fire Insurance Company of Hartford, Connecticut, an insurance company incorporated by authority of State of Connecticut of the net receipts of such agency for the year ending April 30, 1926: Gross receipts (gross premiums less return premiums); $49,505.09; expenses, $20,495.10; net receipts, $29,009.97."

That was the form used. The expenses are made up of the various things that go to make expenses of operating insurance companies, such as commissions, postage, taxes, salaries and local board taxes and a pro rata proportion of salaries, office rents and all of those things that are necessary in the operation of insurance companies, recognized expenses in operating any business.

The commissions were those paid to the local agents. They vary in Cook County, and, in fact, in the state. During this period they ran from 20 per cent to 35 per cent of the premiums. We may have paid the same agent 20 per cent, part 25 per cent and part 35 per cent. We paid some of them as low as 20 per cent and from that it ran up from 20 per cent to 35 per cent.

I cannot say what the commission arrangement was. It was the arrangement of allowance of commission as prescribed by the Chicago Board of Underwriters and I am not thoroughly familiar with the rate. I could not tell you what proportion of the gross premiums paid 20 per cent and what paid 25 per cent or what paid 30 per cent. I could [fol. 23-148] not tell the average commission paid. It averages different in different agencies. There were not very many telegrams in Cook County. I don't know what percentage of gross receipts would be consumed by that item. The fire department tax is fixed. That is 2 per cent of the fire premiums. The Section 30 tax was whatever the tax was extended on the net receipts. It runs on the average pretty close to 2 per cent. It would not in those years when we did not pay the tax.

Q. Did you decrease your insurance premiums those years from what they had been before or did you raise them? A. I think our premiums were on the increase in those years.

They were more from 1923 to 1927 than they had been the five years previous. We were a growing company up until recently. The fire patrol tax amounted in the neighborhood of 2 per cent of the fire business on the Cook County business.

The expenses we included in that expense other than commissions, telegrams, postage, fire department tax, fire patrol assessment and Section 30 tax, were a ratable proportion of the salaries of the officers, the salaries and expenses of men whose duties are to work in Cook County exclusively. We included the expenses that were spread from month to month on our books for our own information as to cost of operating the company, which included salaries; that is, what could be called overhead expense, salaries, rents, etc.

The books from which I made up the returns that I filed with the Board were kept in the usual and ordinary course

of the business. They are true and correct as far as I know.

[fol. 23-149]. Redirect examination:

It is a fact that during that period that the commissions beginning at 20 per cent are graduated only upon the different classifications of business, so that upon a certain type of insurance written by an agent he gets a certain agreed commission and upon a certain other type of insurance or risk he gets a certain different rate of commission. So it depends entirely on the aggregates of the different classifications as to how you could arrive at an average. Without these different aggregates and classifications we could never get an average for the commission. We would have to take the total premiums and the total of the classes to get the total commissions and then get the ratio of the commissions paid to the premiums written. It is something we would have to reduce to calculation before I could give any answer, because an agency might write all dwelling house business which would be of the highest rate. That agent would average 30 per cent if that is what he did. The lowest rate of commissions is 20 per cent. That applies to most downtown risks in the loop. It applies on what we call special hazards like a creamery plant; that is a non-preferred business, and foundry and machine shops.

The downtown insurance gives the agent the lower commission. That was the 20 per cent commission class. I could not say what part of the total business would allow 20 per cent commission. That would differ with various companies. Dwelling houses and churches would get the 35 per cent commission and household furniture risks. Apartment buildings are so-called preferred classes. The rates on that business are lower. A dwelling house is much cheaper than a creamery or something like that.

[fol. 23-150] Henry Rankin Morrison Smith, called for defendant, testified as follows:

Direct examination:

I live at 69 East Division street and for some years have been connected with the so-called Firemen's group of insurance companies, which includes the Firemen's Insurance Company, the National Ben Franklin Insurance Com-

pany, the Girard Fire & Marine Insurance Company, the Superior Insurance Company, the Concordia Insurance Company, the Milwaukee Mechanics Insurance Company and the Capital Fire Insurance Co. I have been twenty-two years with the Firemen's Insurance Co. and varying periods with the others.

During that period and particularly 1923 to 1928, inclusive, I was assistant secretary and secretary, and second vice-president with the Firemen's.

I was in charge of preparing and filing the annual net receipt returns for the Firemen's, Girard, Mechanics and National Ben Franklin during that period and for the Superior and Concordia during part of that period. I didn't do the manual work. I did not personally verify the results, but I checked the final return. These figures were taken from the books and records kept in the usual and ordinary course of business of each company under my supervision and so far as I know were true and correct. To the best of my knowledge the amount stated as gross receipts in each return was the true and correct amount of gross receipts of each of the said companies for fire, marine and inland navigations premiums, which is also true in re-
[fol. 23-151] gard to expenses and amount of net receipts.

During those years the only property that the companies had in Cook County was the net receipts, excepting that in the last two years they all had physical property, in which they all participated. We made separate returns and the property was distributed among them and taxed separately. There is no tax remaining unpaid by any of these companies excepting the net receipts.

Cross-examination:

I did not personally keep the books; they were kept by other employees in the ordinary course of business and were assumed correct. We got the gross receipts from our books. Our formula for expenses is to take what we call specific expenses that we allow agents and then take a pro rata according to the premium income of what we call overhead or home office expense. I could not say what percentage of the gross expenses were consumed by commissions, telegrams, postage, fire department tax, fire patrol assessment and Section 30 tax, etc. The commissions paid

the agents varied from 20 per cent up, according to the character of the risk. The lower commission goes on the bigger risk, special hazard. The higher commission would go on what we call preferred risk where the fire hazard was considered less. The bulk of our premiums comes from loop risks. I can't say off-hand what commissions were paid in those years, but I can get the information. I can't tell how much telegrams, postage, etc., would consume. The fire department tax would be two per cent. I can't say [fol. 23-152] what the fire patrol assessment was throughout that period, but it must be 1½ or 2 per cent at present.

Some of the agents hire sub-agents. They write the policies and issue them and sell and assemble the business. The principal agent takes that expense out of his commission; his compensation is his commission. We do not pay the salaries of the sub-agents' clerks or his office rent, telegrams and postage. He pays everything except the fire department, fire patrol and Section 30 taxes. His whole compensation is what we pay him in commissions. Out of his commission he pays his own clerk hire, telegrams, postage, office rent, etc.

I could not tell what proportion of the gross premiums the agents gets 20 per cent of.

The commission is charged in the agent's account at the different rates and the total of that commission becomes a credit to the agent and he remits everything to the principal office excepting his commission and some postage that we allow on our policies.

I don't know what the percentage was of expense to gross receipts in any of these companies without referring to the books at the office.

In order to avoid taking unnecessary testimony it is here agreed that the testimony of the witness H. R. M. Smith shall be taken to be the testimony of the witnesses representing the other companies excepting as to the amounts of net receipts and percentages.

STIPULATION

Stipulation that the tax rates in the City of Chicago for the years 1923 to 1927, inclusive, with only slight and un-

substantial changes were as follows: 7.91 for 1923, 8.40 for [fol. 23-153] 1924, 9.05 for 1925, 9.29 for 1926, and 4.85 for 1927.

STIPULATIONS

Stipulations showing that for the years 1923 to 1926, inclusive, the defendant made certain returns of the net receipts, the Board of Assessors and the Board of Review made certain assessments of said net receipts, appended thereto the necessary affidavits, returned the same to the county clerk, who extended the taxes thereon at the rates determined by him, made up the collector's warrants and delivered the same to the county collector, who returned the taxes unpaid and delinquent, and also showing what the taxes would have been had they been extended upon 50 per cent of the net receipts or upon 30 per cent of the net receipts.

The figures thus presented in the stipulations for the respective years were as follows:

1923

Defendant's return of net receipts	$85,926.00
Board of Assessors full value	85,926.00
Board of Assessors assessed value	42,963.00
Board of Review assessed value	85,926.00
Tax extended	5,853.40
Tax if extended on 50% of net receipts	3,401.00
Tax if extended on 30% of net receipts	2,117.00

1924

Defendant's return of net receipts	$139,035.00
Board of Assessors full value	139,035.00
Board of Assessors assessed value	42,963.00
Board of Review assessed value	139,035.00
Tax extended	7,019.48
Tax — extended on 50% of net receipts	5,880.00
Tax if extended on 30% of net receipts	3,528.00

[fol. 23-154]

1925

Defendant's return of net receipts	$153,315.00
Board of Assessors full value	153,315.00
Board of Assessors assessed value	76,657.50
Board of Review assessed value	153,315.00
Tax extended	5,059.58
Tax if extended on 50% of net receipts	6,937.45
Tax if extended on 30% of net receipts	4,599.45

1926

Defendant's return of net receipts	$96,853.00
Board of Assessors full value	96,853.00
Board of Assessors assessed value	48,426.50
Board of Review assessed value	96,853.00
Tax extended	6,312.96
Tax if extended on 50% of net receipts	4,459.00
Tax if extended on 30% of net receipts	2,694.00

The foregoing statement with respect to assessments and extensions of taxes for the years 1923 to 1926, inclusive, are not to be construed as meaning that no other assessments or extensions of taxes were made for either of said years, but are to be construed as not in conflict with the testimony introduced showing that other and additional assessments of the same net receipts and extensions of taxes thereon were made by the Board of Assessors and the Board of Review for said years.

STIPULATION

Stipulation showing that for the year 1927 the defendant made a return of its net receipts, the Board of Assessors and the Board of Review made certain assessments of said net receipts, appended thereto the necessary affida-
[fol. 23-155] vits, returned the same to the county clerk, who extended the taxes thereon at the rates determined by him, made up the collector's warrants and delivered the same to the county collector, who returned the taxes unpaid and delinquent, and also showing what the taxes would have been had they been extended upon 60 per cent of the net receipts.

The figures thus presented in the stipulation are as follows:

1927

Defendant's return of net receipts	$76,291.00
Board of Assessors full value	76,291.00
Board of Assessors assessed value	38,145.50
Board of Review assessed value	76,291.00
Tax extended	5,895.19
Tax if extended on amount of net receipts	3,686.00
Tax if extended on 60% of net receipts	2,220.00

The foregoing assessments for the year 1927 were entered under the head of "credits" in the regular personal property assessment book used for the assessment of all kinds of personal property other than net receipts of foreign, fire, marine and inland navigation insurance companies and were not entered in the special assessment book used for the assessment of net receipts of foreign, fire, marine and inland navigation insurance companies. Such assessments were on the same net receipts covered by the subsequent assessment made in 1928.

It is also stipulated that the defendant received no notice from the Board of Review of any hearing or any proposed hearing upon any proposed assessment or revision of net receipts on so-called omitted net receipts for either of the years 1923-1927, inclusive, other than that given prior to [fol. 23-156] the hearing before the Board of Review of December 15, 1927, and that said defendant did not know of the imposition of any so-called omitted net receipts taxes for said years until the filing of this suit against it.

It is also stipulated that the loss ratio of the defendant for said tax years, 1923-1927, were not less than 45 per cent of its premium received in Cook County; that is, that out of every dollar of premium received by defendant in said county it was required to pay at least 45 cents in losses arising in said county. There was a loss ratio of all stock fire insurance companies in Cook County of not less than 45 per cent of gross premium receipts.

The defendant never paid any of the taxes mentioned in the foregoing stipulations covering the alleged assessments therein mentioned for either of said years 1923 to 1927, inclusive. No suits, other than the present suit, were ever brought to collect any of said taxes.

Proceedings by petition to the Director of Trade and Commerce to cancel and revoke the license to do business

in Illinois of each defendant for nonpayment of said taxes extended on the same assessments made by the Board of Review in 1928 for the years 1923 to 1927, inclusive, which are involved in this suit, were instituted by the plaintiff on February 13, 1930, and said petition was denied by the Director on March 11, 1930, and no other proceedings were instituted to enforce the collection of the same or any part thereof. The assessment of $76,291 made by the Board of Review for the year 1927 was made under the heading of "credits," as shown by the evidence in this case. The validity of all of the assessments made by the [fol. 23-157] Board of Review for the years 1923 to 1927, inclusive, and the extensions of the taxes thereon have always been disputed by the defendant.

HERMAN B. SEELY, called for plaintiffs, testified as follows:

Direct examination:

I have made an investigation of the statistics for the purpose of showing the average of expenses of fire insurance companies in the United States in the years 1923 to 1927.

The plaintiff then offered to prove by Seely by statistics in use by insurance companies and satisticians that the average expense of all fire insurance companies in the United States for carrying on their business outside of fire losses amounted to the following percentages of their gross premiums: In 1923 to 42.10 per cent; in 1924 to 42.10 per cent; in 1925 to 44.17 per cent; in 1926 to 44.41 per cent, and in 1927 to 45.5 per cent.

(To which offer of proof the defendant objected and the court sustained the objection; to which ruling of the court the plaintiffs then and there excepted.)

I have examined the returns of the gross receipts of the 17 companies in question with their net receipts for the purpose of ascertaining the percentage of gross receipts charged by them as expenses as far as I could from the record. The paper now shown me is the result of my comparison.

[fol. 23-158] Cross-examination:

These figures were prepared from actual returns of the companies on file with the Board of Assessors for the years 1924, 1925, 1926 and 1927. I did not have the year 1923 so I did not make it. This paper shows the per cent of expenses deducted from gross receipts in making the showing of net returns. When I prepared each of these figures I had before me the actual returns for 1926. For the other years I had the copies I made of the actual returns. I made these copies at the time they were filed with the Board of Assessors.

In each case on this list where there is a figure opposite a company's name under a column showing a year I had either the original return or a copy made from the original return at the time the original return was filed. Where there is a blank left in this paper that indicates that I had no return or copy for that particular year.

The paper referred to, though objected to by the defendant, was here introduced in evidence. It shows that the Concordia Fire Insurance Company, the defendant, for the year 1924, in arriving at its net receipts deducted 52 per cent from its gross receipts, for the year 1925 it deducted 48 per cent, for the year 1926 it deducted 50 per cent and for the year 1927 it deducted 54 per cent.

OFFER IN EVIDENCE.

Plaintiff's counsel then read in evidence extracts from a bill in chancery filed by National Fire Insurance Company in Superior Court of Cook County in April, 1924, to enjoin the collection of the net receipts tax for the year 1923 ex-
[fol. 23-159] tended against it. These extracts set forth, among other things, the following:

Complainant is a corporation authorized to insure those having insurable interests in (a) property (whether upon land or water), (b) rents, use and occupancy, (c) against hazards of fire, lightning, hail, tempest, earthquake, explosion (except upon steam boilers and pipes, fly wheels, engines and machinery connected therewith or operated thereby), water, breakage, leakages, risks of ocean, lake, river, canal and inland navigation, transportation, hazards of windstorms, tornadoes, cyclones, transportation, and in

addition, upon automobiles or motor vehicles, against the hazards of theft and collision:

During the year April 30, 1923, complainant exercised said corporate powers in Illinois and collected and received premiums upon policies of insurance by it written through its Cook County agencies and against risks aforesaid, which action was in nowise prohibited by the State of Illinois and was consistent within the policy and laws of the state.

The statutes of Illinois provide for the chartering and organizing under the law of said state of fire, marine and inland navigation insurance companies having their domicile in Illinois (hereinafter referred to as domestic fire insurance companies) which domestic companies are authorized and empowered to organize by the laws of Illinois and to make insurance on the same kinds and character of property and against the same hazards and risks as foreign fire insurance companies; that during the year ending April 30, 1923, both domestic fire insurance companies and foreign fire insurance companies made insurance in Illinois [fol. 23-160] upon property against hazards and risks aforesaid and upon the same character of hazards and risks; that domestic companies and foreign companies charged, demanded and received during all of said period the same, or approximately the same, premiums as foreign fire insurance companies charged, demanded and received for insurance upon the same property or for the same kind, form and character or type of hazard or risk; that foreign fire insurance companies are in direct competition with domestic fire insurance companies in making insurance against the hazards and risks aforesaid.

The statutes of Illinois provide for chartering casualty insurance companies and for the licensing of foreign casualty insurance companies to transact the business of casualty insurance; that casualty companies, both domestic and foreign, are authorized to and during the said year did within the state make insurance, among other things, upon automobiles or other motor vehicles against all or any of the risks of fire, lightning, windstorms, tornadoes, cyclones, explosions, etc., and also made insurance against loss or damage by water caused by the breakage or leakage of sprinklers, etc., and upon growing crops, livestock or other property against loss or damage by lightning, windstorms, hail storms and cyclones.

The power so exercised by said casualty companies are the powers of insurance, which were exercised in Illinois by the complainant and by other foreign fire insurance companies; that casualty companies, both domestic and foreign, during that year charged, demanded and received the same or approximately the same premiums as foreign fire [fol. 23-161] insurance companies did for a like amount of insurance upon like hazards of the kind aforesaid; that foreign fire insurance companies, including complainant, are, and during that year were in direct competition with casualty insurance companies, domestic and foreign, in the business of making insurance on the property of the kinds, form and character and types of hazards thus described.

The aggregate amount of the premium received by complainant and other foreign fire insurance companies for and on account of insuring property of the kind, form and character and of the type of hazards thus referred to (and which may also be insured by casualty insurance companies, both domestic and foreign) constitutes a large and substantial percentage and part of its and their receipts in the State of Illinois and within the County of Cook and Town of South Chicago collected by complainants and their respective agencies; and the aggregate amount of premiums received by casualty insurance companies, both domestic and foreign, for and on account of insuring the property of such kinds, form and character, constitutes a large and substantial percentage of their net receipts; that during the year in question there were approximately 147 foreign casualty companies actually transacting business in Illinois, and among other things which during said year were insured by foreign insurance companies and likewise by casualty insurance companies, domestic and foreign, are and were automobiles or other motor vehicles, stationary or operated under their own power, which were insured respectively by foreign fire insurance companies and casualty companies, both domestic and foreign, against risks and [fol. 23-162] hazards of windstorms, tornadoes, cyclones, etc.; that during said year there were approximately 950,000 automobiles and motor vehicles in the State of Illinois, a large part of which were located in Cook County and in the Town of South Chicago; that foreign casualty insurance companies for the year 1923 received upwards of $1,000,000 in gross premiums for the insurance of auto-

mobiles and other motor vehicles; that complainant is informed and states that foreign casualty companies in Illinois additionally received during 1923 a sum not less than said sum last mentioned in gross premiums for other types of insurance which they are so authorized to and permitted to and during said period of one year did write by concurrent authority and power and by like permission of the State of Illinois given to foreign casualty companies and to foreign fire insurance companies.

For many years prior to 1923 all the kinds of property and all the various hazards above mentioned have been insured not only by fire insurance companies, foreign and domestic, and by casualty companies, foreign and domestic, but also by other insurers and during said entire period said various types and kinds of insurance have been written and made up on the said various kinds, classes and characters of property upon the said various hazards mentioned, by individuals and associations of individuals and groups of individuals and groups of persons styling themselves Lloyd associations and such persons, associations and aggregations of persons were wont and accustomed to and did write insurance identical with foreign fire insurance companies and in direct competition with such foreign fire insurance companies.

[fol. 23-163] The personal property of taxpayers generally throughout Cook County for 1923 and for many years prior thereto had been generally reduced, debased, equalized and set down in the column headed "full value" at not exceeding 60 per cent of its true actual and market value and one-half of the amount so set down was set down in another column headed "assessed value"; that the Board of Review for the year 1923 thus uniformly debased the value of personal property excepting the net premium receipts of the complainant and other foreign fire insurance companies, which said net receipts were purposely, designedly and intentionally left at their full value and at such amount entered in the assessment column with the design, purpose and intent that complainant should be subjected to a rate of taxation greater and different than that to which other personal property in South Chicago and Cook County was subjected to.

This Bill was filed in the Superior Court of Cook County on April 3, 1924; a similar Bill containing these same al-

legations, except the amount of the assessment and the tax, was filed by the Hanover Fire Insurance Company and nine other companies. The Hanover Fire Insurance Company went to the Supreme Court of the United States and its allegations were considered by the Supreme Court of the United States when they held the law unconstitutional.

Mr. Gilbert: Do you want to know the purpose of this? I think you are entitled to know. You are now alleging in your stipulation that these casualty companies and Lloyds and different things are competitors in all these various [fol. 23-164] lines of business and you are alleging that now as one of the grounds of having the law adjudged unconstitutional when it is a ground that I say was passed upon by the Supreme Court of the United States and by the Supreme Court of Illinois.

Mr. Silber: That is true. We are alleging that as one of the grounds of unconstitutionality of Section 30 if we ever get that far.

Complainants here offer in evidence Tax Commission Form 16 which is as follows:

Mr. Silber: Objected to as incompetent, irrelevant and immaterial.

The Court: It may go in subject to that objection.

OFFER IN EVIDENCE

Tax Commission Form No. 16

Form to be Used in Making the Return of Net Receipts Required by Section 30 of the Act of March 11, 1869, Relating to Fire, Marine and Inland Navigation Insurance, as Amended 1879

Individual Return

Return of net receipts for the year ending April 30, 192-, by the —— agency, located at St. and No., city or village: ——, County, Illinois, for the —— Insurance Co. of Lloyds, of address: ——.

[fol. 23-165] The Return Must Comply with the Following Instructions

An Individual Return must be filled out for every agent issuing or countersigning policies, including any general

agent who issues or countersigns policies of reinsurance or direct insurance, or who has paid taxes in bulk for other agents during the year. A general agent or home officer may fill in the Individual Return as attorney for the local agent, but must not in so doing introduce items of transaction not administered by the local agent and shown on his books, such as reinsurance, overhead and supervisory expense, etc.

Gross receipts are all premiums received for policies issued or countersigned by the agent during the year without deduction on account of the location of the risks. Items of expenses must be actual without the use of computed percentages, except that taxes paid by a general agent for other agents may be pro rated on the receipts of the agents for whom they were paid. When the taxes listed in the Itemized Statement have been paid by an agency other than the one making the Return and the amounts are pro rated the note at the bottom of the return must be filled out with the names of the pro rated taxes and the name and address of the agent who paid them. The total thus pro rated must not exceed the actual payment by such agent. Dues paid to bureaus or associations of underwriters must not be included in Operating Expenses. Return must be made of all business enumerated in the classification of business whatever the title of the foreign company or foreign government Lloyds writing the business.

[fol. 23-166] Deduction for expenses not covered by the itemized statement and for exemption of lines of business covered by the classification of business may be claimed in a Schedule setting forth the facts and detail and attached to the return. Enter the total of the deductions claimed for expenses and exemptions in the space "Total Deductions as per Schedule Attached."

Classification of Business.

1. Fire; including Use and Occupancy, Combined Fire and Sprinkler Leakage, and the Fire portions of combined Fire and Tornado or Hail, or both.

2. Ocean Marine.

3. (a) Motor Vehicles: Fire Policies and Fire portions of Fire and other Coverage.

(b) Motor Vehicles: All coverage other than Fire, excluding Damage to Person.

4. Aircraft.
5. Inland Navigation and Transportation.
6. Tornado, Windstorm and Cyclone.
7. Hail.
8. Sprinkler Leakage.
9. Riot, Civil Commotion and Explosion.
10. All others, viz, ——.

[fol. 23-167]

Itemized Statement

	Gross premiums, dollars	Returned premiums, dollars	Operating expenses											
			Commissions, Dol's	Cts.	Telegrams, postage, etc. Dol's	Cts.	Fire dept., tax, Dol's	Cts.	Fire pat. assessment Dol's	Cts.	Sec. 30 tax Dol's	Cts.	Total operating exp. Dol's	Cts.
1														
2														
3a														
3b														
4														
5														
6														
7														
8														
9														
10														
Totals														

Total Gross Premium less Total Returned Premiums.....

Total Gross Premiums less Total Returned Premiums and Total Op. Exp.....

Total Claimed Deductions as per Schedule Attached.....

Net Receipts for which Liability is Acknowledged.....

Subscribed and sworn to before me this—day of ——, A. D. 192–. —— ——.

NOTE.—The —— Taxes are prorated and were paid by —— ——, Gen. Agt., or Mgr., —— ——.

Section 30 of the Act of March 11, 1869

Relating to Fire, Marine and Inland Navigation Insurance

Every agent of any insurance company, incorporated by the authority of any other State or government, shall return to the proper officer of the county, town or municipality in which the agency is established, in the month of May annually, the amount of the net receipts of such agency for the preceding year, which shall be entered on the tax lists of the county, town and municipality, and subject to the same rate of taxation, for all purposes—State, county, town [fol. 23-168] and municipal—that other personal property is subject to at the place where located; said tax to be in lieu of all town and municipal licenses; and all laws and parts of laws inconsistent herewith are hereby repealed; Provided, that the provisions of this section shall not be construed to prohibit cities having an organized fire department from levying a tax, or license fee, not exceeding two per cent, in accordance with the provisions of their respective charters, on the gross receipts of such agency, to be applied exclusively to the support of the fire department of such city.

Penalty.—Section 22 of the Act of March 11, 1869

Any violation of the provisions of this act shall subject the party violating the same to a penalty not exceeding five hundred dollars for each violation, and of the additional sum of one hundred dollars for each month during which any such agent shall neglect to file such affidavits and statements as are herein required.

Penalty.—Section 4 of the Act of June 4, 1879

For the Better Regulation of the Business of Insurance

Any such incorporated company, association or partnership, which shall transact its business in this State in violation of the provisions of this Act, shall together with the agent or agents so unlawfully transacting such business jointly and severally be subject to a penalty of five hundred dollars ($500.00) to be sued for and recovered in the name of the People of the State of Illinois, by the State's

Attorney of the county in which such agent or agents may reside, and one-half of said penalty when recovered shall [fol. 23-169] be paid into the treasury of said county, the other half to the informer of such violations. Provided, however, that any company, whose license may have been revoked as aforesaid shall thereafter be permitted to transact such business as may be absolutely necessary to wind up its business in this State and none other; Provided further, that nothing in this Act contained shall be construed to prevent the filing of an information in the nature of a quo warranto against such corporations so violating the provisions of this Act.

Part of Section 4 of the Act of May 31, 1911

An Act to regulate and control insurance against loss or damage by fire, lightning, hail, windstorm and sprinkler leakage, by partnerships, associations, individuals, or aggregations of individuals, not now authorized to do business in this State, and prescribing the penalty for violation thereof.

Every association, partnership, individual or aggregation of individuals so assuming liability upon property not owned by its members shall so far as the same shall be applicable to the business transacted, be subject to the same requirements, fees and taxes, except as to capital stock and deposits, as are by law imposed upon corporations engaged in the same or similar business in this State, for purposes of taxation, gross receipts or premiums shall be construed to be the cost of insurance to the insured, excluding portions of premiums returned to policy holders. Provided, however, that nothing herein shall apply to any business done in accordance with the surplus line law of this State: And provided, further, that mutual [fol. 23-170] insurance companies incorporated under the laws of other States shall be entitled to do business in this State subject to the provisions of this Act.

Title of Sprinkler Leakage Insurance Act

An Act authorizing fire insurance companies to insure sprinklers, pumps or other fire apparatus and also to insure against loss or damage by the same. (1905)

Automobile Clause of Act of March 11, 1869. (Sec. 1a (1912))

That all insurance companies authorized to transact business of fire, marine or inland navigation insurance in this State may, in addition to the business which they are now authorized by law to do, insure automobiles or other motor vehicles, whether stationary or being operated under their own power, against all or any of the risks of fire, lightning, windstorm, tornadoes, cyclones, explosions, hail storms, transportation by land or by water, theft and collision, upon filing with the Insurance Department of the State of Illinois official notification of their purpose so to do: Provided, the same shall be clearly expressed in the policies.

Section 1, Clause 7, of the Casualty Act. (1899)

Seventh.—Against any other casualty or insurance risk specified in the article of incorporation, which may lawfully be the subject of insurance and the formation of corporation for insuring against which is not otherwise provided for by these Statutes.

[fol. 23-171] The net receipts from insurance against the hazards of fire, marine and inland navigation and transportation; automobile hazards except damage to persons; and sprinkler leakage hazards; must be returned for taxation by all agents, issuing or countersigning policies for any foreign company or foreign government Lloyds, whether such company or Lloyds is termed fire, marine, automobile or casualty.

Tax Commission Form No. 16

Insurance Companies Return of Net Receipts

See Section 30 of the Act of March 11, 1869

For the Year ——.
Agency: ——.
Address: ——.
Name of Company or Lloyds: ——.
Address: ——.

[fol. 23-172] PEOPLE'S EXHIBIT 2

12/17/31

6181

Edward R. Litsinger, Chairman; William H. Weber, Charles V. Barrett

Meyer Cossman, Chief Clerk

Telephone: Franklin 3000

Seal of the County of Cook, Illinois. March, 1831, Firemen's Ins. Co. Received, E. P., Nov. 11, 1927. Western Department, Chicago, Ill. Indus. Insurance Co. of N. Y. Pa.—Phila.—1920.

Board of Review of Cook County, Room 337, Third Floor, County Building, Chicago, Ill.

November 8, 19—.

To Mechanic's Ins. Co. of Philadelphia, Pa., Herbert A. Clark, Mgr., 844 Rush Street, Chicago, Ill.

[fol. 23-173] Notice for Years Ending April 30, 1870, to 1898, Inclusive

You are hereby notified that at 10 o'clock a. m., Thursday, Dec. 15, 1927, in the hearing room of the Board of Review of Cook County, Illinois, on the third floor of the County Building, in Chicago, Illinois, there will be a hearing upon a proposed listing and assessment of net receipts of your agencies in Cook County, Illinois, required to be listed and subject to taxation under Section 30 of the Act entitled, "An Act to incorporate and to govern fire, marine and inland navigation insurance companies doing business in the State of Illinois," approved March 11, 1869, and the acts of the General Assembly amendatory thereof and supplementary thereto, and which were not legally listed, but were omitted from listing and assessment for each of the periods of one year ending April 30 of the years 1870 to 1898, both inclusive, and upon which no taxes have been paid, at which time you are required to attend and will be entitled to be heard.

You are further notified that you are hereby required to file with the clerk of said Board of Review in his office on the third floor of the County Building, in Chicago, Illinois, on or before November 22, 1927, separate returns in writing for each one of your agencies maintained in Cook County, Illinois, during each period of one year ending April 30 of the years 1870 to 1898, both inclusive, verified by the oath of some one or more of your officers or agents, setting forth in a separate return or returns for each of said one year periods the net receipts of all of the business [fol. 23-174] done for you by each such agency for such year and in the following detail:

Classification of Business

If your annual report for the year to the Insurance Department of the State of Illinois gives only "Fire" or "Marine and Inland" as the kind of business done in the State of Illinois during the year, all of the business of the agency must be summed up under such heading. If the business done and there reported comprises "Fire," "Marine and Inland," "Tornado," etc., separate the business of the agency into the amounts of each of such kinds of business that may have been done. State for each kind of business in a tabulation the following:

(a) Gross premiums received.

(b) Returned premiums on cancellations.

(c) Gross premiums less Returned Premiums, (a) less (b).

(d) Commissions paid.

(e) Telegrams, Postage and other incidentals paid.

(f) The allocated part of any payment of Fire Department Tax.

(g) The allocated part of any payment of Sec. 30 tax.

(h) The allocated part of any payment of Fire Patrol Assessment.

(i) The allocated part of any payment of expenses of Chicago Board of Underwriters.

(j) The allocated part of any payment of expenses of Chicago Underwriters Assn.

[fol. 23-175] (k) The allocated part of any payment of expenses and salaries of employees engaged exclusively in supervising business in Cook County.

(l) The allocated part of any payment of all other kinds of expenses.

(m) The total of an itemized showing of the deduction claimed on account of each kind of business included in the above for which exemption is claimed.

(n) The amount of the net receipts of such agency.

Items (f), (g), (h), (i), (j) will not be considered unless accompanied by a return made by some one of your officers, or agents, which shall show for each of said items the exact amount of the total payment, the total amount of business upon which the rate of allocation is based, itemized each kind, and the rate of allocation.

In like manner such report must show the itemized expenses, the itemized amounts of business upon which the allocation is based and the rate of allocation for items (k), (l).

Companies that are mergers or combinations of other companies, must file returns for the agents of such other individual companies for the years prior to the merger or combination.

Notice for Years Ending April 30, 1899, to 1922, Inclusive

You are hereby further notified that at 10 o'clock a. m., Thursday, Dec. 15, 1927, in the hearing room of the Board of Review of Cook County, Illinois, on the third floor of the County Building, in Chicago, Illinois, there will be a [fol. 23-176] hearing upon a proposed listing and assessment of net receipts of your agencies in Cook County, Illinois, required to be listed and subject to taxation under Section 30 of the Act entitled, "An Act to incorporate and to govern fire, marine and inland navigation insurance companies doing business in the State of Illinois," approved March 11, 1869, and the acts of the General Assembly amendatory thereof and supplementary thereto, and which were not legally listed, but were omitted from listing and assessment for each of the periods of one year ending April 30 of the years 1899-1922, both inclusive, and upon which no taxes have been paid, at which time you are required to attend and will be entitled to be heard.

You are hereby further notified that you are hereby required to file with the clerk of said Board of Review in his office, on the third floor of the County Building, in

Chicago, Illinois, on or before November 22, 1927, separate returns in writing for each one of your agencies maintained in Cook County, Illinois, during each period of one year ending April 30 of the years 1899 to 1922, both inclusive, verified by the oath of some one or more of your officers or agents, setting forth in a separate return or returns for each of said one year periods the net receipts of all of the business done for you by each such agency for such year the same details and items of information above required with respect to the returns for each of the one year periods ending April 30 of the years 1870 to 1899, both inclusive.

[fol. 23-177] Notice for Years Ending April 30, 1923, to 1926, Inclusive

You are hereby further notified that at 10 o'clock a. m., Thursday, Dec. 15, 1927, in the hearing room of the Board of Review of Cook County, Illinois, on the third floor of the County Building, in Chicago, Illinois, there will be a hearing upon a proposed listing and assessment of net receipts of your agencies in Cook County, Illinois, required to be listed and subject to taxation under Section 30 of the Act entitled, "An Act to incorporate and to govern fire, marine and inland navigation insurance companies doing business in the State of Illinois," approved March 11, 1869, and the acts of the General Assembly amendatory thereof and supplementary thereto for each of the periods of one year ending April 30 of the years 1923 to 1926, both inclusive, upon which no taxes have been paid, and the listing and assessment of which heretofore attempted to be made for each of said years was illegally made, at which time you are required to attend and will be entitled to be heard.

You are hereby further notified that you are hereby required to file with the clerk of said Board of Review in his office on the third floor of the County Building in Chicago, Illinois, on or before November 22, 1927, separate returns in writing for each one of your agencies maintained in Cook County, Illinois, during each period of one year ending April 30 of the years 1923 to 1926, both inclusive, verified by the oath or oaths of some one or more of your officers or agents, setting forth the net receipts of all business done for you by such agency for such year, which returns shall [fol. 23-178] be in strict compliance with the form known

as "Tax Commission Form No. 16" and the instructions contained therein, a copy of which form is hereunto attached.

Notice for Year Ending April 30, 1927

You are hereby notified that at 10 o'clock a. m., Thursday, Dec. 15, 1927, in the hearing room of the Board of Review of Cook County, Illinois, on the third floor of the County Building, in Chicago, Illinois, said Board of Review will review the listing and assessment made by the Board of Assessors of said county of the net receipts of your agencies in said county required to be listed and subject to taxation for the year ending April 30, 1927, under Section 30 of the Act entitled "An Act to incorporate and to govern fire, marine and inland navigation insurance companies doing business in the State of Illinois," approved March 11, 1869, and the acts of the General Assembly amendatory thereof and supplementary thereto.

You are hereby further notified that you are hereby required to file with the clerk of said Board of Review in his office on the third floor of the County Building in Chicago, Illinois, on or before November 22, 1927, separate returns in writing for each one of your agencies maintained in Cook County, Illinois, during the one year ending April 30, 1927, verified by the oath or oaths of some one or more of your officers or agents, setting forth the net receipts of all business done for you by such agency for such year, which return shall be in strict compliance with the form known as "Tax Commission Form No. 16" and the instruc-[fol. 23-179] tions contained therein, a copy of which form is hereunto attached.

Dated Chicago, November 8, 1927.

The Board of Review of Cook County, Illinois, by Meyer Cossman, Chief Clerk.

(Attached to the notice is a copy of Form 16.)

It was here admitted by the defendant that it appeared before the Board of Review by its attorneys on December 15, 16 and 28, 1927.

The plaintiff offered in evidence a letter written by Frederick D. Silber, one of the attorneys for the defendant,

to the Board of Review on September 21, 1931, containing among other things the following:

"The companies have, however, steadfastly refused to recognize the validity of Form 16 and they will continue to do so."

Said offer was denied by the court, and exception.

Mr. Silber then made the following statement:

"I am perfectly willing to say that the companies have always taken the position that Form 16 was essentially an invalid form because it did not give them the benefits of deductions that the law should and did give them and for other reasons, and therefore they refused to comply with it."

[fol. 23-180] JAMES A. LAUER, called for defendant, testified as follows:

Direct examination:

I reside in Chicago where I have lived practically all my life. Up to 1925 I was first assistant to Stephan Griffin, chief clerk of the Board of Review. After that I was first assistant to Meyer Cossman, the succeeding chief clerk. I had supervision of all the group hearings, like the banks and the fire insurance companies, and before then the brewers and the malsters and all those that were summoned as a class, as a group. I had general supervision over the assessment of net receipts of the foreign fire stock insurance companies during the years 1923 to 1928, inclusive. During that period there were assessments annually and extensions of net receipts on the books of the Board of Review. While I was there acting in the capacity of assistant, Charles V. Barrett, a member of the Board of Review dealt with me in regard to these net receipts taxes. I remember that during the year 1928 these assessments of omitted net receipts from 1923 to 1927 were spread upon the books and Charles V. Barrett, a member of the Board caused them to be spread upon the books. I don't think I had any talk with any other member of the Board. The sources from which I got the figures that I spread upon the books

in 1928 for these so-called omitted net receipts were the returns that were filed by the insurance companies. Mr. Seeley arranged the figures. Mr. Seeley furnished them to me. From his figures I transferred to the books of the Board. That was done under my immediate direction. I [fol. 23-181] checked these figures without any other source of calculations. During that period Mr. Seeley had space in the personal property department. He worked there and his stenographer worked there. He was there almost daily.

Mr. Barrett told me to put these figures on the books. Seeley furnished me the figures. Outside of that I was aware of no other consideration of the amount of these assessments by the Board as a board. As far as I know the Board did not consider it as a board excepting in the respect that I have stated.

There was a record kept of the proceedings of the Board during the period in question. We kept a calendar that showed the day and the hour when these matters were placed for hearing. It just noted the things that were coming up for hearing. Where there was anything to keep we kept minutes. I watched that they were drawn and the stenographer did the actual reporting. You served me with a subpœna to produce such minutes for that period. I could not answer whether they are now in existence because I don't know. I understand that some of the records have been destroyed.

Cross-examination:

What I did in spreading these assessments I did by direction of Mr. Barrett.

The defendant introduced in evidence a contract entered into January 10, 1928, between Ralph R. Bradley and the City of Chicago, acting through Samuel A. Ettelson, its corporation counsel, which contract provided for the rendering of services by Bradley in and about the collection of [fol. 23-182] taxes on the omitted net receipts of fire insurance companies and the payment to him out of the moneys collected of 33⅓ per cent of the amounts collected for the corporate fund of the City of Chicago for years prior to 1923 and of 15 per cent of the amount collected for subsequent years.

The defendant introduced in evidence contract of September 27, 1926, between the County of Cook and Bulkley, Moore & Tallmadge, by which that firm was to receive 15 per cent of the money received for net receipts taxes from foreign fire insurance companies and 33⅓ per cent of all received from alien fire insurance companies or the alien property custodian.

AGREEMENT AS TO PENDING SUITS

It was here agreed that in 1928 the People of the State of Illinois filed suits against the insurance companies upon omitted net receipts running back from the year 1869, up to 1922, and that those suits so far as they are against the 17 companies in question are still pending and undetermined. When the settlements were made with the other companies the declarations were all amended so as to include all these taxes that were put on the books. The companies now in question refused to do anything about it and so those suits against them are still pending. The plaintiffs are ready to amend and put them all in so that the result of this lawsuit will be to wipe them all off.

[fol. 23-183] HERMAN B. SEELEY, called for defendant, testified as follows:

Direct examination:

The State Tax Commission in 1924 addressed a circular letter to the assessors, of which the one shown here is a correct copy. I got that letter from the State Tax Commission. It might have been issued in 1924. It refers to the decision of 1923.

Mr. Silber: I object to the offer of this letter in evidence, not on the ground that it is not a true copy, but on the ground that it is hearsay, that it is not binding upon these insurance Companies; that notice addressed by the State Tax Commission to tax bodies in the state is something entirely beyond the record in this case.

The Witness: I don't know whether these letters were received by the Board of Assessors and the Board of Re-

view in Cook County at the time they were issued. They were sent to all assessors. The matter was not sent to the Board of Review but was sent to the assessors. I got this copy from the Tax Commission. They had mailed that to the assessors.

Mr. Silber: Well, understand, I am not basing my objection upon any such technical ground.

The Court: I understand that.

Mr. Gilbert: The State Tax Commission, as pointed out the other day, is the body that tells these assessors on the Board of Review what they shall do. They got this Form 16 form of report and then they proceed to prescribe some book to enter these assessments in, which accounts for the [fol. 23-184] fact that in 1927 the Board of Review entered these net receipts in a separate book, and I think it is competent to show what the Tax Commission held with respect to these things.

The court held the letter could go in for what it was worth.

Mr. Gilbert: It may not be worth very much but of course there is a whole lot of truck in here.

OFFER IN EVIDENCE

Circular letter by the State Tax Commission to assessors. This letter called attention to the decision of the Supreme Court in People vs. Barrett, 309 Ill. 53, and stated that it was binding upon all assessors and Board of Review in the state and that the Board of Review was required to observe the following instructions in appraising such net receipts for the year ending April 30, 1924:

1. Serve each agent doing a business of fire insurance and inland navigation insurance with copies of Tax Commission Form 16, 1924 edition enclosed herewith, one for each foreign insurance company or foreign government Lloyds for which he has done any business of the kinds classified in the form during the year ending April 30, 1924. The business of companies in this state or of Lloyds of another state must not be returned on Form 16 or entered on the tax lists as net receipts. Instruct agents doing

business for an underwriter's agency to make return of such business in the name of each company assuming the risk; for example, business done for the Philadelphia underwriters should be returned one-half for the fire association by Phil. Und. and one-half for the insurance company of North America by Phil. Und. The business for the New [fol. 23-185] York underwriters should be returned for the Hartford Fire Insurance Co. by N. Y. Und.

2. Make entries of net receipts on assessors' warrants having titles and headings like the enclosed sheet. Such warrants should be bound in books separately from other assessments. Entries under the separate headings are to be copied from similar items in Form 16 without alteration. Enter as net receipts the total beneath the itemized statement in the form which is termed "total gross premiums less total return premiums and total Op. Exp." Returns upon Form 16 must be in strict agreement with the instructions in the form and returns upon other forms must be rejected and demand made for a correct return upon Form 16. In the absence of a return upon Form 16 make no entries of estimated amount and note the refusal of a return in the margin added "remarks." Deliver all returns on Form 16 to the Board of Review with the book containing the entries of net receipts.

3. Report all cases of refusal and make due return upon Form 16 to the State's Attorney of the county with the request that they begin immediately suits for the penalties listed on the back of Form 16.

Refusal to make the return of net receipts upon Form 16 as provided therein is a failure "to comply with the requirements now imposed on existing law" and is subject to the penalty of $500 provided in Section 4 of the Act of June 4, 1879, for the better recognition of the insurance business and also to the penalty of $100 per month for each month in which the agent shall fail to make the return (Section 2 of the Act of March 11, 1869, governing fire, [fol. 23-186] marine and inland navigation insurance business). Within two weeks after notification of the State's Attorney of the cases of refusal to make return advise this Commission of the status of the proceedings.

HERMAN B. SEELEY further testified as follows:

The slips shown me are the slips which Mr. Silber asked me to produce and which were used by me in computing the assessments. The gross receipts shown on the returns made by the National Insurance Company were taken as a basis and they were allowed a 30 per cent deduction for expenses on the ground of business, which is done by the Class 1 accounts. Then the accounts that were outlying were allowed 25 per cent deduction because their expenses were less and where they showed rturns for outside towns those were not assessed at all, they were deducted out, left out.

The 30 per cent deduction for expenses had been determined by the Board in 1924 as a maximum amount. The construction adopted by the Board of the decision in the Barrett case there was——

Mr. Silber: Now, I object, if the court please, to a statement by the witness of what some public body, acting in an official capacity, concluded, because there is only one way to prove that and that is by the records of that body. If the Board of Review made a finding to that effect their minutes or some official entry would have to be used to prove it. You cannot have anybody come in here and testify to that sort of thing.

The court sustained the objection and the plaintiffs excepted.

[fol. 23-187] W. H. ROADIFER, recalled for further cross-examination, testified as follows:

Cross-examination:

In my testimony in reference to the returns made to the Board of Review in these various years, I testified that they were taken from the books and were correct showings of gross receipts and expenses. In our business we keep what we call an agents' register. Against that the agent renders an account which is checked against that and the net results of his monthly account is placed on what we call a premium record, on the insurance company's books. That is at our department office here in Chicago.

In Cook County the arrangement with the agent is not a signed contract. When we appoint an agent in Cook County we allow the Board commission which is established by the Chicago Fire Underwriters. This agent collects the insurance premiums. He makes a report to the company once a month. He puts in his report the premiums, listing them by policies. He puts in the return premiums that he has paid back under our policies, listing those by the policy number. He subtracts the return premiums from his premiums, making the net premiums. Then he computes them, the commission to which he is entitled on the net premiums and charges any other expenses that might be allowable on his account, such as the postage, and arrives at the balance due the company for the month, and he remits the amount to the company.

[fol. 23-188] The returns I speak of were made up from other sources than the books of the agent. It is the practice of our company to forward these accounts for storage purposes to our home offices in Hartford. In arriving at the matter of net receipts in reports to the Board of Assessors we would not simply report the above premiums less the return premiums or the deductions which the agent had made. We had rents, lights besides, salaries, travel expenses, all other expenses, that is, a portion of all the expenses necessary in operating an insurance company.

Herman B. Seeley, recalled for plaintiffs, testified as follows:

Redirect examination:

These slips consist of computations made from each return. The National Fire had a number of agencies scattered about through the City of Chicago.

Mr. Roadifer made the return for all the agents. He made them separately for each agent. I took the gross receipts as reported in each of these returns and I applied the 25 per cent equalization. I applied the 25 per cent equalization because of my understanding the Board had fixed that. What I did then was to compute the expenses of 30 per cent. Here is what was done. Mr. Roadifer made a return for each agent and I marked on it if it was in the

South Town District and in the Loop. As I marked it I marked it as S1, meaning that it was to have the 30 per cent deduction. The outlying agents in the South Town would be all added together and allowed 25 per cent deduction for expenses, also we separated them from the different [fol. 23-189] park districts throughout the city. The court had held in the Barrett case that the different agencies should be assessed to their location, and as the Board of Review could not at that time make any assessments for outlying towns, those were omitted to be put in at some subsequent assessment, so that the assessments represent simply the assessments for the City of Chicago; and not for any outside town. All other items were excluded. I had a young girl who was a stenographer and had been sent over to assist me by the law department of the School Board and she tabulated those and the amounts that were arrived at by adding up and taking off the 70 per cent, were then turned over to a clerk to put them on the books. In other words, I made the computations. I deducted 30 per cent, whatever the commission was, from the gross receipts and those were turned over to the clerk and they were entered in that way. In nearly every other instance of other complaints where the agencies were in the South Town and the Class 1 agents, and in those cases, the deduction was always 30 per cent for expenses.

Cross-examination:

In fact, that 30 per cent I am referring to at this minute in this five years' time alleged omitted net receipts assessment in order to get at them.

I did not bring about the decision of the Barrett case to the extent of having these assessments extended at 100 per cent instead of the way they had been for 50 years. That was an error of the court. The court made the error. We did not. It was an error brought about by the work that you had done.

[fol. 23-190] I did work upon the basis of which the case of People vs. Kent and People vs. Barrett were finally decided. I will not accept the statement that the result of the opinion of the court in People vs. Barrett was brought about by these activities of mine at that time.

In our petition before the Supreme Court we alleged that the companies had been deducting an overhead which

should not be allowed, but that they had not put in their automobile business which they classed at that time as a marine business; they had not put in the marine business or the inland navigation business on the theory that the risks were not in Cook County, were not Cook County risks but were outside, and you will find the decision particularly emphasizes that point in deciding. We insisted that the full amounts of the net receipts should be listed in the full value column. Now if they had done that there would have been no trouble. We never sought to have the division by five set aside. It was the court that made that mistake. It was not in our case at all, neither in the Kent case. I should say everybody was surprised. I had nothing to do with the 300 suits that were filed. I did not cause 300 suits to be filed against these foreign stock insurance companies. But as the court had insisted on it I prepared the evidence for that. Subsequently, these back tax suits were wiped out by the subsequent decision of the Supreme Court in the Hanover case in the 327th Illinois. But the first, the one for the first 30 years was revised by the Board of Review at the same time when this other revision was made. The fact is in 1924 the Board made two assessments.

[fol. 23-191] COLLOQUY

Here the following colloquy occurred:

Mr. Seely: And in 1925 and 1926 there was only one assessment made by the assessors and the Board of Review similar to that one made in 1925.

Mr. Gilbert: In other words, in 1924, as I understand it now, the Board of Assessors made their assessment and the Board of Review, all they did was to double it?

Mr. Silber: Yes.

Mr. Gilbert: And then they also made this other assessment in which they took this 30 per cent business? That was in 1924?

Mr. Silber: That was in 1924.

Mr. Gilbert: In 1925 and 1926 the Board of Review only made one assessment?

Mr. Silber: Let me add to that. In 1925 and 1926 the evidence shows both by Mr. Barrett's testimony and by

other testimony that in addition to this form of assessment, the Board of Review made an assessment upon the so-called credits, personal property listed as credits, which were the same net receipts we had returned.

Mr. Seeley: Not in 1925 and 1926, but he did in 1927.

Mr. Silber: In other words, if I am getting you correctly now, in 1925 and 1926, there was the Board of Assessors' assessment at 50 per cent according to law.

Mr. Seeley: Oh, no.

Mr. Silber: Our returns were reduced to 50 per cent. That is what the Board of Assessors did in every year, each year. If that is not conceded I won't concede anything be- [fol. 23-192] cause that is the basis of it.

Mr. Gilbert: That is right.

Mr. Silber: The Board of Assessors took our returns and put in the assessed valuation column at 50 per cent. The Board of Review took the records of the Board of Assessors and took our gross receipts less 30 per cent expenses and called them net receipts for those two years. In 1927 they assess-d the same net receipts under the column marked credits or personal property and also the alleged omitted net receipts for said year and in addition on this form they assessed us in 1928 on the net receipts. That is correct, isn't it?

Mr. Gilbert: That is correct.

Mr. Silber: So the stipulation will show those facts?

Mr. Gilbert: Yes, will show those facts.

Mr. Silber: And show the fact that those 30 per cent deductions were without our knowledge and without any hearings so far as we are concerned we did not know about them until now when it was brought to our attention. To that extent I am willing to waive all questions of error in the admission of this kind of testimony as to its not being the best form of testimony and agreeing with Judge Gilbert in trying to write up the record in this form.

[fol. 23-193] Herman B. Seeley, recalled, testified as follows:

Cross-examination:

In this transcript that was read from in the hearing the other day there was something said about the companies

having made returns before the Board of Review in this hearing in December, 1927, that were at least equivalent to 75 and perhaps 80% of the amount that would have been shown if the returns had been made on Form 16. That was for one company. I assumed when I made up my statement for each company of so-called omitted net receipts in 1928, the gross receipts would amount to at least 75 per cent of the amount that would be shown as a whole if those returns had been made on Form 16.

The statement before the Board of Review was if they had made their sworn returns on Form 16 they would have shown not more than 25 per cent greater than the return they made but that was on all the companies. In 1928 when I say we debased them, what I have in mind is I gave them an equivalent of a debasement because of that 25 per cent difference. We did not debase any company's return by anything excepting this imaginary 25 per cent. We took 30 per cent or 25 per cent, as the case may be, in Class 1 agencies, or outlying agencies as allowance for expenses and carried the remainder forward as net receipts, and that is the way all the so-called alleged omitted property assessments were made in 1928, excepting with very few unimportant exceptions.

STIPULATION

Stipulation that each defendant in each of the cases had been admitted to do business in Illinois for many years [fol. 23-194] prior to 1923 and each of the defendants on May 1, 1923, and continuously thereafter had, and now has, within the State of Illinois intangible property consisting of agents and the good will of the business, of substantial value and in each case of a value in excess of $5,000, and that such respective agency plants had been built up by each of said defendants at large cost and expense over a long period of time, but no assessments thereof against the defendants were ever made or any taxes thereon paid.

The foregoing was all of the evidence heard or received by the court upon the trial of said cause.

FINDINGS

Thereupon, the defendant tendered to the court and the court made and held the following findings to each of which the plaintiffs then and there excepted:

Finding No. 1. The court finds that the respective assessments of so-called omitted net receipts of the defendant company for the years 1923, 1924, 1925, 1926 and 1927, sued for in this suit, were fraudulently made and that the taxes extended thereon are void.

Finding No. 2. The court finds that the so-called omitted net receipts assessments made against the net receipts of the defendant company, for the years 1923, 1924, 1925 and 1926, were made upon a basis of valuation substantially greater for full fair cash market value than the 60 per cent valuation adopted by the Board of Assessors and the Board of Review of Cook County, for other property assessed in each of said years, respectively, and that the statutory 50 per cent reduction was not applied to such full value in order to determine the assessed value of such net receipts for each of said years, and that thereby the taxes so ex- [fol. 23-195] tended lacked uniformity with taxes extended against other property of the same full fair cash market value, and thereby such taxes so extended were void.

Finding No. 3. The court finds that the net receipts assessment made against the net receipts of defendant company, for the year 1927, was made upon a basis of valuation substantially greater than the 60 per cent basis of valuation adopted by the Board of Assessors and the Board of Review of Cook County, for other property assessed in said year 1927, and thereby the tax extended upon the assessment so made lacked uniformity and was void.

Finding No. 4. The court finds that the defendant company was not given any opportunity to be heard in December, 1927, or thereafter, upon the assessments of so-called omitted net receipts proposed to be made for the years 1923, 1924, 1925 and 1926, respectively, and that the assessments made in 1928 upon so-called omitted net receipts for the years in question were made without further notice to the defendant company, and without further op-

portunity given for said company to be heard, and that the taxes extended upon such assessments were and are void.

Finding No. 5. The court finds that assessments upon net receipts for the years 1923, 1924, 1925, 1926 and 1927, were made by the Board of Review of Cook County in 1928, and that prior assessments upon the identical net receipts so assessed for each of said years in 1928 had been made by the Board of Assessors and Board of Review of Cook County, in each of said respective tax years; that taxes had been extended upon such prior assessments against the defendant company, and that liability for the payment of such prior taxes so extended remained of record against the defendant company; that the net receipts so assessed in each of said respective tax years were the same and [fol. 23-196] identical net receipts as were again assessed for each of said years in 1928 by the Board of Review of Cook County; that the assessments so made in 1928 for said respective tax years were null and void and the taxes extended thereon were likewise null and void.

Finding No. 6. The court finds that the assessment of omitted net receipts for the years 1923, 1924, 1925 and 1926, and of net receipts for the year 1927, made by the Board of Review, all in 1928, was made without the exercise of honest judgment by the Board of Review and at the mere will of said Board.

Finding No. 7. The court finds that in 1928 Herman B. Seeley was a beneficiary under contracts with the City of Chicago, the County of Cook, and other taxing bodies, whereby it was agreed that he was to derive a contingent compensation from the collection of taxes assessed against net receipts of the defendant and other foreign stock fire insurance companies in Illinois; that said Seeley thereby had a contingent fee interest in the collection of the identical taxes upon net receipts of the defendant and other foreign stock fire insurance companies that were assessed by the Board of Review and are now being sued for in this suit. The court finds that the valuations of so-called omitted net receipts adopted by the Board of Review of Cook County, in 1928, for the five tax years in question, were prepared by said Seeley and were listed as valuations of net receipts upon the books of said Board of Review of

Cook County, without consideration by the Board, and assessed at the going tax rates applicable, and that the taxes so extended upon the assessments so made were fraudulent and null and void.

The court in rendering its decision hereinafter stated in favor of the defendant based it solely upon the foregoing findings.

[fols. 23-197-397] Thereupon, the court found the issues in favor of the defendant, and that the defendant was not indebted to the plaintiffs on acount of the taxes set forth in the declaration, as therein alleged, to which finding the plaintiffs then and there excepted.

MOTION FOR NEW TRIAL

Thereupon, the plaintiffs moved the court to set aside said finding and grant the plaintiffs a new trial in said cause; which motion the court overruled, and to which ruling the plaintiffs then and there excepted.

JUDGMENT

Thereupon, the court entered judgment in favor of the defendant upon said finding, and that the plaintiffs should take nothing by their suit, to the entry of which judgment the plaintiffs then and there excepted.

[fol. 398] IN SUPREME COURT OF ILLINOIS, JUNE TERM, A. D. 1932

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiffs and Appellants,

vs.

THE CONCORDIA FIRE INSURANCE COMPANY, Defendant and Appellee.

Appeal from Circuit Court of Cook County

Hon. H. Sterling Pomeroy, Judge Presiding

ASSIGNMENT OF ERRORS

And now come the plaintiffs and appellants by their attorney and say that in the record and proceedings of this

court below in the above entitled cause manifest errors have intervened to the prejudice of plaintiffs and appellants as follows:

First. The court below erred in finding that the respective assessments of so-called omitted net receipts of the defendant company for the year 1923, 1924, 1925, 1926 and 1927, sued for in this suit were fraudulently made and that the taxes extended therein are void.

Second. The court below erred in finding that the so-called omitted net receipts assessments made against the net receipts of the defendant company, for the years 1923, 1924, 1925 and 1926, were made upon a basis of valuation substantially greater for full fair cash market value than the sixty per cent valuation adopted by the Board of Assessors and the Board of Review of Cook County, for other property assessed in each of said years, respectively, and that the statutory fifty per cent reduction was not applied to such full value in order to determine the assessed value of such net receipts for each of said years, and that thereby the taxes so extended lacked uniformity with taxes extended against other property of the same full fair cash market value, and thereby such taxes so extended were void.

[fol. 399] Third. The court below erred in finding that the net receipts assessment made against the net receipts of defendant company, for the year 1927, was made upon a basis of valuation substantially greater than the sixty per cent basis of valuation adopted by the Board of Assessors and the Board of Review of Cook County, for other property assessed in said year 1927, and thereby the tax extended upon the assessment so made lacked uniformity and was void.

Fourth. The court below erred in finding that the defendant company was not given any opportunity to be heard in December, 1927, or thereafter, upon the assessments of so-called omitted net receipts proposed to be made for the years 1923, 1924, 1925 and 1926, respectively, and that the assessments made in 1928 upon so-called omitted net receipts for the years in question were made without further notice to the defendant company, and without further opportunity given for said company to be heard, and that

the taxes extended upon such assessments were and are void.

Fifth. The court below erred in finding that assessments upon net receipts for the years 1923, 1924, 1925, 1926, and 1927, were made by the Board of Review of Cook County in 1928, and that prior assessments upon the identical net receipts so assessed for each of said years in 1928 had been made by the Board of Assessors and Board of Review of Cook County, in each of said respective tax years; that taxes had been extended upon such prior assessments against the defendant company, and that liability for the payment of such prior taxes so extended remained of record against the defendant company; that the net receipts so assessed in each of said respective tax years were the same and identical net receipts as were again assessed for each of said years in 1928 by the Board of Review of Cook County; that the assessments so made in 1928 for said respective tax years were null and void and the taxes ex-[fol. 400] tended thereon were likewise null and void.

Sixth. The court below erred in finding that the assessment of omitted net receipts for the years 1923, 1924, 1925, and 1926, and of net receipts for the year 1927, made by the Board of Review, all in 1928, was made without the exercise of honest judgment by the Board of Review and at the mere will of said Board.

Seventh. The court below erred in finding that in 1928 Herman B. Seeley was a beneficiary under contracts with the City of Chicago, the County of Cook, and other taxing bodies, whereby it was agreed that he was to derive a contingent compensation from the collection of taxes assessed against net receipts of the defendant and other foreign stock fire insurance companies in Illinois; that said Seeley thereby had a contingent fee interest in the collection of the identical taxes upon net receipts of the defendant and other foreign stock fire insurance companies that were assessed by the Board of Review and are now being sued for in this suit. The court below erred in finding that the valuations of so-called omitted net receipts adopted by the Board of Review of Cook County, in 1928, for the five tax years in question, were prepared by said Seeley and were listed as valuations of net receipts upon the books of said Board of Review of Cook County, without consideration by

the Board, and assessed at the going tax rates applicable, and that the taxes so extended upon the assessments so made were fraudulent and null and void.

Eighth. The court below erred in finding the issues in said cause in favor of the defendant.

Ninth. The court below erred in not finding the issues in said cause in favor of the plaintiffs.

[fol. 401] Tenth. The court below erred in finding that the defendant was not indebted to the plaintiffs on account of the taxes set forth in the amended declaration as therein alleged.

Eleventh. The court below erred in not finding that the defendant was indebted to the plaintiffs on account of the taxes set forth in the amended declaration.

Twelfth. The court below erred in not sustaining the motion of the plaintiffs to set aside its finding for the defendant and in not granting the plaintiffs a new trial in said cause.

Thirteenth. The court below erred in entering judgment in said cause in favor of the defendant.

Fourteenth. The court below erred in not entering judgment in said cause in favor of the plaintiffs.

Fifteenth. The court below erred in not entering judgment in said cause in favor of the plaintiffs for the amount of the taxes claimed in the plaintiffs' declaration with interest thereon at one per cent per month from Jan. 1, 1932.

Sixteenth. The court below erred in admitting incompetent evidence on behalf of the defendant.

Seventeenth. The court below erred in rejecting competent evidence offered by the plaintiffs.

Eighteenth. The court below erred in entering judgment in manner and form in which the same was entered.

Whereupon, for these and other errors manifest in the record, the plaintiffs pray that the judgment of the court below may be reversed and a judgment entered in this court in favor of the plaintiffs and against the defendant

[fols. 402-404] for the amount of the taxes claimed in the plaintiffs' declaration with interest thereon according to law, or that such other order or judgment may be entered by the court as may be in accordance with the law and the evidence.

John A. Swanson, State's Attorney; Leon Hornstein, Louis H. Geiman, Harris F. Williams, Hiram T. Gilbert, Plaintiffs' Attorneys.

[fol. 405] In Supreme Court of Illinois

Docket No. 21441—Agenda 39—June, 1932

The People of the State of Illinois, Appellant,

v.

The Concordia Fire Insurance Company of Milwaukee, Wisconsin, Appellee

Opinion—Filed Oct. 22, 1932

Mr. Chief Justice Heard delivered the opinion of the court:

The State's attorney of Cook county, by the direction of the board of county commissioners of that county, brought a suit in the circuit court in the name of the People of the State of Illinois, under section 230 of the Revenue act, against appellee, the Concordia Fire Insurance Company of Milwaukee, Wisconsin, for omitted and unpaid taxes on the net receipts of its business in Cook county for the years 1923 to 1927, inclusive. The cause was heard by the court without a jury, and the issues which had been made were found in favor of the defendant and judgment was entered on the finding. From the judgment the plaintiff has appealed to this court.

This is a companion case of People v. Franklin Nat. Ins. Co. 343 Ill. 336, the main difference being that in that case the defendant stood by its demurrer to plaintiff's declaration, while in the present case an issue of fact was made and the judgment was based on evidence heard by the court. In each case one of the main contentions of appellee was

that section 30 of the act of 1869, (Cahill's Stat. 1929, chap. 73, sec. 159,) the section by virtue of which the assessment in each case was made, was unconstitutional and void within the purview of the constitutions of the United States and of this State. An extensive brief has been filed by appellee upon this subject, but a careful and exhaustive examination of it discloses the fact that no new point is raised therein which was not raised by the same counsel and considered and discussed by this court in opinions filed in People v. Franklin Nat. Ins. Co. supra, and Hanover Fire Ins. Co. v. Harding, 327 Ill. 590, in each of which cases section 30 was held to be valid and especially found not to contravene the fourteenth amendment of the United States constitution. For a more complete discussion of the questions raised, reference is made to the opinions in those cases. The latest discussion as to the meaning and applicability of the fourteenth amendment by the Supreme Court of the United States is to be found in an opinion handed down May 23, 1932, in Sproles v. Binford, 76 U. S. [fol. 406] (L. ed.) 827, and by this court in People v. Monroe, 349 Ill. 000, reference to which opinions is likewise made.

The evidence shows that for the years 1923 to 1926, inclusive, appellee made in each year what it claims was a proper return of its net receipts to the board of assessors of Cook county. Such returns were accepted by the taxing bodies and taxes extended thereon in each year, and in each year the taxes were returned by the county collector as unpaid. These assessments were not scaled and debased, the same as other personal property assessments, in accordance with the rule laid down in Hanover Fire Ins. Co. v. Harding, supra. A like return was made for 1927, but while the assessment books were in the hands of the board of review for review, on November 8, 1927, a notice in writing was given appellee "that at ten o'clock A. M., Thursday, December 15, 1927, in the hearing room of the board of review of Cook county, Illinois, on the third floor of the county building in Chicago, Illinois, there will be a hearing upon a proposed listing and assessment of net receipts of your agencies in Cook county, Illinois, required to be listed and subject to taxation under section 30 of the act entitled, 'An act to incorporate and to govern fire, marine

and inland navigation insurance companies doing business in the State of Illinois,' approved March 11, 1869, and the acts of the General Assembly amendatory thereof and supplementary thereto, for each of the periods of one year ending April 30 of the years 1923 to 1926, both inclusive, upon which no taxes have been paid, and the listing and assessment of which heretofore attempted to be made for each of said years was illegally made, at which time you are required to attend and will be entitled to be heard." On the same day a like notice was served upon appellee that at the same time and place the board of review would review the listing and assessment made by the board of assessors of the net receipts of appellee's agencies in Cook county required to be listed and subject to taxation for the year ending April 30, 1927, under section 30 of the aforementioned act, and require appellee to file with the clerk of the board of review, on or before November 22, 1927, separate returns in writing for each one of its agencies maintained in Cook county during the year ending April 30, 1927. At the time and place mentioned in the notice appellee appeared before the board of review and an extended hearing was had. It commenced on December 15, 1927, and was continued on the [fol. 407] 16th of December, at which time it was stated that this court was then in session and that a petition for rehearing was pending in Hanover Fire Ins. Co. v. Harding, supra, and that it was likely to be decided before the adjournment of court, which would probably occur within a week. By consent of all parties it was agreed that further proceedings before the board of review should be suspended until such adjournment. It was thought that the decision of the court on the petition for rehearing might settle all the matters in controversy. The petition was denied on December 20, 1927, and thereafter the parties were notified to appear before the board of review on December 28, 1927, at which time the hearing was resumed, all parties being represented by attorneys. A full stenographic report of the hearing is found in the record and seventy-eight pages of it may be found in the abstract. The hearing was informal and consisted of questions by members of the board and statements and counter-statements as to the law and facts, with some admissions of fact by the respective attorneys. The gist of the proceedings was that the attorneys for the taxing body claimed that the returns

by appellee for the years 1923 to 1927, inclusive, were not made in a proper manner; that they were each incorrect by omitting therefrom a large amount of the net receipts of appellee's insurance business in Cook county, and called to the attention of the board certain specified omissions and that appellee had paid no taxes levied on its net receipts for the years 1923 to 1927, inclusive. On its part appellee contended that section 30 was unconstitutional; that appellee was not required to make any return of net receipts; that it had made correct returns; that these returns did not contain the net receipts from certain lines of its insurance business; that in arriving at the net receipts listed it had deducted amounts for overhead, and that the amounts returned only amounted to about seventy-five or eighty per cent of its net receipts; that it had paid no tax at all on them for the years 1923 to 1927, inclusive, and that the net receipts returned had not been scaled and debased, as had the returns on other personal property. Although requested to give the board detailed information as to its gross receipts and as to the deductions made therefrom, appellee offered none and denied that the board of review had any jurisdiction in the matter of the assessment of appellee's net receipts. Thereafter the board of review, acting on the best information attainable, without further [fol. 408] notice to appellee increased the amount of the assessment for each of the five specified years, and taxes were levied thereon, which not being paid, this suit was brought for their recovery.

On the trial it was stipulated by the parties that defendant might introduce any evidence which would be admissible in equity under appropriate pleadings and any evidence which would be competent in support of a bill to restrain the collection of the taxes, plaintiff waiving any objection to the jurisdiction of the court to entertain and give effect to any equitable cause of action or defense in favor of defendant, and that the court might enter such judgment or decree as may be appropriate to and in conformity with the evidence, so that defendant can have the same relief to which it would be entitled under a bill to restrain the collection of the taxes; that defendant may offer evidence proving that (a) the assessment of the taxes by the board of review was fraudulent and void; (b) that

the board of review had no power to assess net receipts taxes for the years in question as omitted net receipts or as omitted property taxes; (c) that the omitted net receipts taxes assessed for the years in question were void and uncollectible; and (d) that section 30 of the act of 1869 is unconstitutional and void. It was also stipulated, in substance, that during the years in question various non-incorporated foreign associations, various individuals, various so-called Lloyds and various domestic fire insurance companies were lawfully engaged in transacting the business of fire, marine and inland navigation insurance in Illinois in competition with defendant and all other foreign incorporated fire insurance companies during that period lawfully transacting the business of fire, marine and inland navigation insurance, and that said non-incorporated foreign associations, individuals, Lloyds and domestic insurance corporations during said years were not assessed for taxation upon their several net receipts covering fire, marine and inland navigation insurance risks assumed by them in Illinois, or upon any real or personal property other than net receipts, like all other property owners and tax-payers, and that said foreign stock fire insurance companies were assessed for taxation upon their net receipts derived from such competitive business; that foreign casualty insurance companies also carried on such competitive business and were not taxed on their net receipts derived therefrom. The questions arising by reason of these stipulations were fully discussed and decided in People v. Franklin Nat. Ins. Co. supra.

[fol. 409] Section 276 of the Revenue act provides:

"If any real or personal property shall be omitted in the assessment of any year or number of years, or the tax thereon, for which such property was liable, from any cause has not been paid, or if any such property, by reason of defective description or assessment thereof, shall fail to pay taxes for any year or years, in either case the same, when discovered, shall be listed and assessed by the assessor and placed on the assessment and tax books. The arrearages of tax which might have been assessed, with ten per cent interest thereon, from the time the same ought to have been paid, shall be charged against such property by the county clerk. It shall be the duty of county clerks to

add uncollected personal property tax to the tax of any subsequent year, whenever they may find the person owing such uncollected tax assessed for any subsequent year."

It is claimed by appellee that it having made returns of its net receipts for the years 1923 to 1926, inclusive, and the taxing authorities having accepted such returns as correct and assessed taxes thereon, its net receipts for those years could not be classified as omitted property and assessed by the board of review in 1927 even though the net receipts for such years exceeded the amount returned. If a property owner has not been assessed on credits at all, the board of review may in subsequent years assess credits owned by him but which were omitted, but if credits have been assessed by the assessor and the taxes extended thereon have been paid, the board of review in subsequent years has no authority to increase such assessment, either upon the theory that it was too low or that the board there assessed omitted credits. (People v. Hunt, 311 Ill. 291; Warner v. Campbell, 238 id. 630; Barkley v. Dale, 213 id. 614.) In those cases it was held that the assessor is required, in determining the value of property assessed, to exercise his judgment, and that his acts are in the nature of judicial acts and not subject to review by his successor or succeeding boards of review for errors of judgment. Section 277 of the Revenue act, however, provides:

"If the tax or assessment on property liable to taxation is prevented from being collected for any year or years, by reason of any erroneous proceeding or other cause, the amount of such tax or assessment which such property shall have paid may be added to the tax on such property for any subsequent year, in separate columns designating the year or years."

[fol. 410] In the instant case appellee made its return of net receipts for the years 1923 to 1926, inclusive. Such returns were received and accepted as correct by the assessor, acted upon by the taxing bodies and taxes extended thereon. The taxes extended were not legal, for the reason that the amounts returned as net receipts were not scaled and debased as the returns of other personal property were in the extension of the taxes. They were not omitted property, as a return had been made which was accepted by

the assessor as correct. In People v. Missouri Pacific Railroad Co., 301 Ill. 541, it is said:

"It is the levy which creates the tax, and the extension by the county clerk is merely a formal step necessary to enable the authorities to collect the tax. The legislature recognized that a situation like the one before us might arise, and so it provided by section 277 of the Revenue act that if a tax on property liable to taxation is prevented from being collected for any year or years by reason of any erroneous proceeding or other cause, the amount of such tax or assessment which such property should have paid may be added to the tax on such property for any subsequent year."

While the board of review was not authorized in 1927 to assess appellee for omitted net receipts, yet such receipts were liable to taxation for those years, and the collection of such taxes having been prevented by erroneous proceedings, the amount of such tax or assessment which such property should have paid could be added to the assessment on such property for the year 1927 by the board of review, and the tax extended in 1927 for the years 1923 to 1926, inclusive, was legal to the extent that it was based on the returns made by appellee and accepted by the assessors during such years.

One of the findings of the trial court on the basis of which its judgment was entered was, that "the assessment of omitted net receipts for the years 1923, 1924, 1925 and 1926, and the net receipts for the year 1927, made by the board of review, all in 1928, was made without the exercise of honest judgment by the board of review and at the mere will of said board." This finding has no basis in the evidence. The transcript of proceedings before the board of review shows that the board manifested a marked desire to do justice to all parties and repeatedly tried to get from the attorneys for appellee figures which would meet the requirements of the law and could be used as the basis of an assessment satisfactory to both parties, but without success.

[fol. 411] One of the findings of the trial court was, that the valuations of so-called omitted net receipts adopted by the board of review in 1928 for the five years in question were prepared by one Seeley, an assistant corporation counsel,

who was under contract with the city of Chicago whereby he was to receive a fee contingent upon the amount collected, and that his valuations "were listed as valuations of net receipts upon the books of the board of review of Cook county without consideration by the board and assessed at the board rates applicable, and that the taxes so extended upon the assessment so made were fraudulent and null and void." Upon the trial Seeley was called as a witness by appellee and testified to the investigations he had made in the reports of appellee to the city and the State and the discrepancies found in appellee's returns of net receipts to the assessor. He also testified to the comparison of appellee's returns and reports with the returns and reports of other companies engaged in the same lines of insurance. As a result of his investigations he made computations and estimates as to the amount of appellee's net receipts upon slips of paper, which estimates and computations were shown to the members of the board of review having charge of the insurance assessments, at whose direction, after being checked up and verified, they were placed upon the assessment roll and afterwards approved by the entire board. The deductions made from the gross receipts were made according to methods adopted in 1924 by the board of uniformly allowing all foreign insurance companies of this class thirty per cent from the gross receipts for expenses. The slips prepared by Seeley were shown by him in court to the attorney for appellee, and no evidence was introduced by it to show the inaccuracy of his figures or that the assessment as made by the board of review was in excess of the actual net receipts.

Appellee's complaint that after the board of review had determined the amount of assessment appellee did not have notice and an opportunity for a second hearing is not entitled to consideration. The entire board heard appellee with consideration at the extended hearings had, and when it declined to give the board the requested information it cannot be heard to complain that the board proceeded to make the assessment on the best evidence obtainable. It was not necessary that in order to do so it should call in witnesses and act on sworn testimony. It is to be noted that the admissions made by appellee's attorneys at the hearings were taken as the basis for the computations upon [fol. 412] which the amount of the assessments were made.

The testimony of the witnesses called by appellee who made out its returns to the assessor showed that in those returns all receipts from business, other than fire, marine and inland navigation insurance, were omitted. In Hanover Fire Ins. Co. v. Harding, 272 U. S. 494, the Supreme Court of the United States upon this point said:

"The petitioner [i. e., the Hanover Fire Insurance Company,] is an insurance company organized under the laws of the State of New York. By its charter it is authorized to do a business of insurance against the hazard of fire, marine perils, inland navigation, tornado, theft, explosion, property damage to automobile and other property by collision, crop insurance, and other similar lines of insurance against hazards. There are in Illinois domestic insurance companies which do business in all such risks. In Fidelity and Casualty Co. v. Board of Review, 264 Ill. 11, decided in 1914, the Supreme Court held that the only insurance companies whose receipts come within section 30 are foreign fire, marine and inland navigation insurance companies doing business in the State, and if they do business in the other hazards above stated, as the complainant and petitioner is authorized to do, then they must pay taxes on their net receipts, made not only from fire, marine and inland navigation company business but also from the other hazards."

Appellee was authorized by law to do business in the same hazards as the Hanover Fire Insurance Company and did engage in the same in Cook county, and therefore it is liable for taxes on its net receipts from all such hazards.

In Pratt v. Raymond, 188 Ill. 469, where the evidence showed that the board of review in making an assessment acted upon information obtained by its members regarding the property of complainant subject to assessment, from his commercial rating, from men in the same line of business, and from persons who had means of knowing what his personal property was, the court in holding the assessment valid said:

"The principal objections urged against the tax are, that the proceedings of the board of review were irregular in not taking sworn testimony and in assessing complainant on evidence obtained in secrecy from rivals in busi-

ness; that the board did not enter on the assessor's books specific items of personal property which were assessed and the value of the same, and did not enter the full value [fol. 413] but only the assessed value; and that the record is not sufficient to sustain the tax because it does not show the particular items of property and the kind thereof assessed or the values thereof. While the record should show the kinds of property assessed and the value thereof, and the total value, the facts alleged and the objections so urged afford no ground whatever for the exercise of the limited jurisdiction of a court of equity."

In Earl & Wilson v. Raymond, 188 Ill. 15, the tax-payer scheduled its property at $26,000. The board of review caused a notice to be served on the tax-payer to appear before it on a day certain to show cause why the assessment should not be increased. Pursuant to the notice the tax-payer's manager appeared before the board and was referred to one member thereof, who examined him in reference to the assessment. Subsequently the entire board of review, in consideration of the information obtained upon the hearing before the one member of the board and from the facts and information obtained by each member from men engaged in the same line of business as appellant, from its commercial rating and standing at the banks, and from financiers in the city and from other sources, increased the valuation to $40,000. On a bill to enjoin the collection of taxes on the increased amount, this court in sustaining the assessment said:

"All bodies composed of a number of persons may, and generally do, act through committees of one or more to procure facts in reference to the matters to be acted upon and receive recommendations as to the action that should be adopted. * * * Appellant's contention that the action of the board of review is invalid for the reason that the witnesses from whom they obtained information as to the value of appellant's property were not called in and sworn and an opportunity given for cross examination is not well founded. The law gives the board the power, and imposes upon it the duty, of changing any assessment which in their opinion may be incorrect; and in fixing the valuation to be placed upon the tax-pay-

er's property the board may act upon their own knowledge, information and judgment, and are not concluded by the statements of the owner of the property."

In American Express Co. v. Raymond, 189 Ill. 232, where the trial court had dismissed a bill to enjoin the collection of taxes assessed and extended, this court on appeal said:

"The complaint was and is that the board of review of Cook county increased the assessed valuation without affording appellant an opportunity to be heard. It is not denied [fol. 414] that appellant was properly notified to appear before the board and show cause why the assessment on its property should not be increased nor that appellant's agent appeared in pursuance of such notice, but the point made is that there was no hearing of facts relating to the value of appellant's property but only an informal conversation between the members of the board and appellant's agent, together with the agents of other express companies who were present at the same time, relative to their respective assessments. It appears that, adopting the suggestion of a member of the board, the board and the representatives of the several companies assembled around a table in the office of the board and took up the matter of the assessment of all such companies together. The board heard what these representatives had to say, but it does not appear that specific valuations were discussed nor that any decision was announced or reached. The meeting adjourned, or, at any rate, the members of it separated, and the appellant claims that its assessment was afterward increased without its knowledge or any opportunity to be heard in reference thereto and without any notice or information from the board as to the evidence or grounds upon which such increase was based. If appellant desired to make any showing to the board that the schedule and valuations of its property were correct and should not be changed or increased it had the opportunity to do so, and it cannot complain that the board did not produce the evidence upon which it acted in making the increase."

In Leper v. Pulsifer, 37 Ill. 110, the tax-payer had furnished the assessor with lists of personal property valuing his personal property at $11,608, and the assessor not being satisfied with this valuation increased it to $25,000,

and then, under section 8 of the Revenue law as it then was, doubled this amount as a penalty. On a bill to restrain the collection of a tax upon the excess valuation it was held that where the statute gives one aggrieved by an assessment the opportunity to appear before the board for the correction of lists after knowledge of the grievance, and he does so appear but declines to prove that the valuation put upon his own property is excessive, the assessment will be presumed to be correct.

In Cummings v. Webber, 218 Ill. 521, the board of review gave a tax-payer notice to appear before the board of review and show cause why his assessment should not [fol. 415] be increased, and he came before the board but made no showing whatever, and the board of review increased his assessment $93,980 upon credits. In sustaining the assessment this court said:

"Where a tax-payer is notified to appear before the board of review and show cause why his assessment should not be increased, and he fails to improve the opportunity so afforded him to avail of his remedy at law by showing cause against an increase, equity will not interfere to relieve him from an increased assessment on the ground, alone, that such increased assessment is excesive in amount or results in double taxation.—Coxe Bros. & Co. v. Salomon, 188 Ill. 571; Standard Oil Co. v. Magee, 191 id. 84."

When we apply the rules hereinabove stated to the facts of this case we must find that the complaints against the assessment of appellee's net receipts for the year 1927 are not well founded, that equity and good conscience require that the tax levied and assessed thereon should be paid, and that a bill to enjoin the collection of such tax could not be sustained.

While this cause as originally brought was an action in debt, yet by stipulation of the parties the cause of action was changed, proper pleadings were waived and a stipulation entered, in effect, that the court might enter a judgment or decree restraining the collection of all or a part of the taxes for which suit was brought or might enter judgment or decree for all or any part of such taxes, in conformity with the evidence, law, equity and good conscience. It was stipulated by the parties that the tax ex-

tended on appellee's net receipts for the year 1923 on the assessment as made by the board of review was $5,853.40, and that the amount of such tax, if extended on the return of the company, accepted and acted upon by the taxing bodies for that year, scaled and debased in conformity with the assessments on other personal property, would be $2,017. The tax for 1924 extended on the board of review assesment was $7,019.48; if extended on appellee's return made for that year it would be $3,528. The tax extended on the board of review assessment for 1925 was $5,059.58; if extended on appellee's return for that year it would be $4,072. The tax extended on the board of review assessment for 1926 was $6,312.96; if extended on appellee's return for that year it would be $2,694. The tax extended on the board of review assessment for appellee's net receipts for 1927, which we hold to be a valid assessment, was $5,895.19. [fol. 416] Under the evidence in this case, and the rules of law applicable thereto, appellee should pay tax on its net receipts for the year 1923, $2,017; for the year 1924, $3,528; for the year 1925, $4,072; for the year 1926, $2,694, and for the year 1927, $5,895.19, making a total of $18,206.19.

While this court has no power to make a tax assessment, yet it and the circuit court, from which this cause came, have power to set aside taxes which are unlawful, and have likewise, in cases like the present, the power and duty to determine what portion of a tax, if any, is lawful, where such fact can be determined from the record. Under the stipulation in this case the circuit court, a jury trial having been waived, should have entered judgment in favor of appellant against appellee for the sum of $18,206.19 and costs.

The judgment of the circuit court is therefore reversed and judgment is entered here for appellant, against appellee, for the sum of $18,206.19 and costs.

Reversed and judgment for appellant.

[fol. 417] IN SUPREME COURT OF ILLINOIS

No. 21441

PEOPLE OF THE STATE OF ILLINOIS, Appellant,

vs.

CONCORDIA FIRE INSURANCE COMPANY OF MILWAUKEE, WISCONSIN, Appellee

Appeal from Circuit Court Cook

JUDGMENT—Oct. 22, 1932

And now, on this day, this cause having been argued by counsel, and the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid, and in the rendition of the Judgment aforesaid, there is manifest error: Therefore, it is considered by the Court that for that error and others in the record and proceedings aforesaid the Judgment of the Circuit Court of Cook County in this behalf rendered, be reversed, annulled, set aside and wholly for nothing esteemed.

Judgment is entered here for appellant, against appellee, for the sum of $18,206.19 and costs.

And it is further considered by the Court that the said Appellant recover of and from the said Appellee its costs by it in this behalf expended, to be taxed, and that it have execution therefor.

Clerk's certificate to foregoing paper omitted in printing.

[fols. 418-420] Be it remembered that, to-wit, on the 16th day of November, A. D. 1932, the same being one of the days in vacation before the December term of Court, 1932, a certain Petition for Rehearing was filed by Appellee.

[fols. 421 & 422] In Supreme Court of Illinois

[Title omitted]

Order Denying Rehearing—Dec. 5, 1932

Now on this day the Court having duly considered petition for rehearing filed herein by appellee and the Court being now advised in the premises doth overrule the prayer of the petition and denies a rehearing of this cause.

[fol. 423] In Supreme Court of the United States

[Title omitted]

Petition for Appeal—Filed Feb. 8, 1933

To the Honorable Oscar E. Heard, Chief Justice of the Supreme Court of Illinois:

Now comes Concordia Fire Insurance Company, a corporation, defendant and appellant in the above entitled cause, and conceiving itself aggrieved by the rulings of the Supreme Court of Illinois and by the final judgment rendered therein in favor of The People of the State of Illinois and against the Concordia Fire Insurance Company, on the 22nd day of October, A. D. 1932, does hereby petition for the allowance of an appeal from said judgment of the Supreme Court of Illinois to the Supreme Court of the United States, and that a citation be granted, directed to The People of the State of Illinois, Plaintiff, requiring it to appear before the Supreme Court of the United States to do and receive what may appertain to justice in the premises, and for the entry of an order fixing the amount of the bond to be required of the defendant on said appeal, and in connection with its petition for appeal defendant presents herewith its assignments of error and prayer for reversal of said judgment of the Supreme Court of Illinois.

Concordia Fire Insurance Company, a Corporation,
by Frederick D. Silber, Its Counsel.

[fol. 424] [File endorsement omitted.]

[fol. 425] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL.—Filed Feb. 8, 1933

Upon the petition of Concordia Fire Insurance Company, a corporation, defendant in the above entitled cause, praying for the allowance of an appeal to the Supreme Court of the United States from the Supreme Court of Illinois, the appeal is hereby allowed upon giving bond in the sum of Twenty Thousand Dollars ($20,000.00).

Dated this 8th day of February, A. D. 1933.

Oscar E. Heard, Chief Justice of the Supreme Court of Illinois.

[fol. 426] [File endorsement omitted.]

[fols. 427 & 428] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER STAYING EXECUTION.—Filed Feb. 8, 1933

This cause coming on for hearing on the petition for the allowance of an appeal by Concordia Fire Insurance Company, a corporation, and the appeal having been allowed upon the filing of a bond in the sum of Twenty Thousand Dollars ($20,000.00), and the Concordia Fire Insurance Company, a corporation, having filed herein a bond in the penal sum of Twenty Thousand Dollars ($20,000.00), and said bond having been duly approved:

It is ordered that execution to enforce the judgment heretofore rendered by the Supreme Court of Illinois on the 22nd day of October, 1932, in favor of the People of the State of Illinois, plaintiff, against the Concordia Fire Insurance Company, a corporation, defendant, in the amount of Eighteen Thousand Two Hundred Six and 19/100 Dollars ($18,206.19), be stayed until further order of the Court.

Oscar E. Heard, Chief Justice of the Supreme Court of Illinois.

[File endorsement omitted.]

[fols. 429-432] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATE OF ILLINOIS,
County of Cook, ss:

Frederick D. Silber, being first duly sworn, on oath deposes and says that on February 9th, 1933, he served a certified copy of the attached order of the Supreme Court of Illinois, staying execution in said cause until the further order of the court, upon the Clerk of the Circuit Court of Cook County, by delivering the said certified copy of said order to Mannie Wolf, a deputy clerk in the office of said Clerk of the Circuit Court of Cook County duly authorized to receive service on behalf of said Clerk.

Dated Chicago, Illinois, February 9th, 1933.

Frederick D. Silber.

Subscribed and sworn to before me this 9th day of February, A. D. 1933. Emma F. Holmes, Notary Public, Cook County, Illinois. (Seal of Emma F. Holmes, Notary Public, Cook County, Illinois.)

[fol. 433] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENTS OF ERROR Filed Feb. 8, 1933

And now comes Concordia Fire Insurance Company, a corporation, appellant in the above entitled cause, and avers and shows that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Illinois in the above entitled cause, the Supreme Court of the State of Illinois erred to the grievous injury and wrong of the appellant herein, and to the prejudice and against the rights of the appellant, in the following particulars, to wit:

1. The Supreme Court of the State of Illinois erred in adjudicating and deciding that Section 30 of an Act of the General Assembly of the State of Illinois entitled "An Act to incorporate and to govern fire, marine and inland navigation insurance companies doing business in the State of Illinois", approved and in force March 11th, 1869, as amended by an Act approved May 31st, 1879, and in force July 1st, 1879, was and is a good and valid enactment, and

was and is not repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

2. The Supreme Court of the State of Illinois erred in denying the claim of the appellant that said Section 30 was repugnant to Section 1 of the Fourteenth Article of Amend-[fol. 434] ment to the Constitution of the United States, in that appellant, being a corporation organized under the laws of the State of Wisconsin, and transacting the business of insurance in the State of Illinois, after having paid to said State of Illinois a tax for the privilege of carrying on its said business in Illinois, and having secured the license, permission and authority of the State of Illinois so to transact the said business of insurance, was held subject to and taxed on its net receipts derived from insurance against lightning, earthquakes, windstorms, cyclones, tornadoes, tempests, hail, frost, snow, ice, sleet, weather, flood, rain, drought, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, explosions (other than steam boiler), sprinkler leakage, and general automobile and vehicle insurance, while casualty insurance companies organized under the laws of states other than the State of Illinois, foreign unincorporated associations, Lloyds, foreign mutuals, reciprocals and other associations of individuals, constituting foreign insurers, and doing business in the State of Illinois, in direct competition with appellant in the business of insuring against the foregoing hazards were and are not subject to a tax on the net receipts derived by such other insurers from such hazards.

3. The Supreme Court of the State of Illinois erred in denying the claim of the appellant that said Section 30 was repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States, in that appellant being a corporation organized under the laws of the State of Wisconsin, and transacting the business of insurance in the State of Illinois, after having paid to the said State of Illinois a tax for the privilege of carrying on its said business in Illinois, and having secured the license, [fol. 435] permission and authority of the State of Illinois so to transact the said business of insurance, was held subject to and taxed on its net receipts derived from hazards of fire, marine, and inland navigation insurance, while do

mestic insurance companies in direct competition with the appellant insuring against the hazards of fire, marine and inland navigation were exempted from the payment of any similar tax on premiums derived by them from the same classes of business.

4. The Supreme Court of the State of Illinois erred in denying the claim of appellant that said Section 30 was repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States, in that appellant being a corporation organized under the Laws of the State of Wisconsin, and transacting the business of insurance in the State of Illinois, and having paid the said State of Illinois a privilege tax for such purpose, and secured permission and authority from the said state so to transact the business of insurance, was subject to a tax on its net receipts derived from said business of insurance, and was denied the right to deduct its losses from its gross receipts in determining the amount of its net receipts, while domestic insurance companies insuring against similar hazards were permitted to deduct the amount of their losses and were not required to pay a tax thereon.

5. The Supreme Court of the State of Illinois erred in denying the claim of appellant that the tax levied for the year 1927 on appellant's net receipts, pursuant to an assessment made by the Board of Review and the judgment sought to be enforced thereunder, was repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States, in that it deprived the appellant of its property without due process of law, by reason of the fact that the Board of Review of Cook County [fol. 436] delegated to an individual the determination of the amount of the net receipts of the appellant for the year 1927, and adopted without further consideration the amount so calculated by said individual, who by reason of contracts theretofore entered into with the taxing bodies of Cook County, of which he was one of the beneficiaries, had a direct financial interest in the proceeds of any tax levied and assessed against the appellant, the extent of said interest being a percentage of the amount of such tax as might be assessed and collected.

6. The Supreme Court of the State of Illinois erred in denying the claim of appellant that the tax levied for the

year 1927 on appellant's net receipts, pursuant to an assessment made by the Board of Review, and the judgment sought to be enforced thereunder, was repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States, in that it deprived appellant of its property without due process of law, by reason of the fact that the said assessment was made by the Board of Review of Cook County at its mere will and caprice, and without the exercise of honest judgment on the part of the said Board of Review of Cook County.

7. The Supreme Court of the State of Illinois, by its final judgment and decision, denied to the appellant the equal protection of the laws in violation of Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States, in that the Board of Review of Cook County in the assessment of taxes upon all other personal property for the year 1927, uniformly, systematically, and deliberately valued such property at only sixty per cent of its true, actual, full value, whereas the Board of Review in making its assessments against the net receipts of the [fol. 437] appellant, did not take sixty per cent of the true, actual, full value thereof, but assessed said net receipts at one hundred per cent of their value instead of at sixty per cent, as all other personal property was assessed.

8. The Supreme Court of the State of Illinois erred in reversing the judgment of the Circuit Court of Cook County, and erred in entering judgment against the appellant, which said action, ruling and adjudication of the Supreme Court of the State of Illinois are in contravention of Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

Wherefore, for these and other manifest errors appearing in the record, the said Concordia Fire Insurance Company, a corporation, appellant, prays that the judgment of the said Supreme Court of the State of Illinois be reversed, annulled and set aside, and held for naught, and that full justice be done it in the premises, etc.

Concordia Fire Insurance Company, a Corporation,
by Frederick D. Silber, Its Counsel.

[fol. 438] [File endorsement omitted.]

[fols. 439-467] Bond on appeal for $20,000, approved and filed February 8, 1933, omitted in printing.

[fols. 468-490] Citation, in usual form, showing service on Thomas J. Courtney et al., filed February 10, 1933, omitted in printing.

[fol. 491] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed Feb. 17, 1931

It is hereby stipulated by and between the parties to the above entitled appeal, by their respective counsel, that the Clerk of the Supreme Court of Illinois may include in the record for appeal to be filed in the office of the Clerk of the United States Supreme Court, the following items:

1. Amended declaration.
2. Demurrer to declaration.
3. Order of June 7th, 1930, overruling demurrer to amended declaration.
4. Pleas of defendant appellant filed June 21st, 1930.
5. Order entered November 21st, 1930, withdrawing plaintiff's demurrer and including stipulation that defendant may offer under general issue any evidence admissible under any form of pleading.
6. Plea of nil debet filed November 21st, 1930.
7. Judgment order entered March 21st, 1932.
8. Bill of exceptions.
9. Judgment of Supreme Court of Illinois entered October 22nd, 1932, and opinion of the court.
10. Order denying petition for rehearing.
11. Order denying motion of defendant appellant to vacate judgment of the Supreme Court of Illinois.

[fol. 492] 12. Petition for appeal.

13. Order allowing appeal to the Supreme Court of the United States.
14. Citation, with proof of service thereon.
15. Appeal bond and approval thereof.
16. Assignment of errors.
17. Order staying execution.
18. Statement showing jurisdiction of the Supreme Court of the United States to entertain appeal.

19. Statement by appellee making against jurisdiction of the Supreme Court of the United States, together with motion by appellee to dismiss the appeal or to affirm the judgment of the Supreme Court of Illinois.

20. Certificate of the Clerk of the Supreme Court of Illinois.

Frederick D. Silber, Counsel for Appellant. Thomas J. Courtney, Leon Hornstein, Louis H. Geiman, Harris F. Williams, Hiram T. Gilbert, Counsel for Appellee.

Dated Chicago, February 15, 1933.

[fol. 493] [File endorsement omitted.]

[fol. 494] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 495] Clerk's return omitted in printing.

[fols. 496 & 496½] IN SUPREME COURT OF THE UNITED STATES

NOTICE

To Thomas J. Courtney, Leon Hornstein, Louis H. Geiman, Harris F. Williams, Hiram T. Gilbert, counsel for appellee:

We herewith serve upon you statement of points upon which appellant intends to rely in the above entitled cause, as provided for in Paragraph 9 of Rule 13 of the rules of the Supreme Court of the United States.

Frederick D. Silber, Counsel for Appellant.

Received a copy of the above and foregoing notice this 20th day of March, A. D. 1933.

Thomas J. Courtney, Leon Hornstein, Louis H. Geiman, Harris F. Williams, Hiram T. Gilbert.

[fol. 497] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY—Filed March 22, 1933

1. That Section 30 of an act of the general assembly of the State of Illinois, entitled "An Act to Incorporate and

to Govern fire, marine, and inland navigation insurance companies, doing business in the State of Illinois", approved and in force March 11th, 1869, as amended by an act approved May 31st, 1879, and in force July 1st, 1879, was and is repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

2. That Section 30 of the Act of 1869 under which appellant is required to return and be assessed, both on net receipts derived from insuring against the risks of fire, marine and inland navigation, when domestic insurance companies are exempted from the payment of taxes on similar net receipts derived by them from the transaction of competitive business with appellant, upon the same risks and in the same territory in Illinois, was and is repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

[fol. 498] 3. That Section 30 of the Act of 1869, in so far as it has been construed by the Supreme Court of Illinois to deny to the appellant the right to deduct its paid losses from its gross receipts, in determining its net receipts subject to tax, when domestic fire insurance companies in direct compensation with the appellant in insuring the same risks in the same territory in Illinois, are taxed only upon the remainder of their receipts after the deduction of their losses, was and is repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States.

4. That Section 30 of the Act of 1869 was and is repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States, in that appellant being a corporation organized under the laws of the State of Wisconsin and transacting the business of insurance in the State of Illinois, and having paid to the said State of Illinois a tax for the privilege of carrying on its said business in Illinois, and having secured the license, permission and authority of the State of Illinois so to transact the said business of insurance; was held subject to and taxed on its net receipts derived from insuring against lightning, earthquakes, windstorms, cyclones, tornadoes, tempests, hail, frost, snow, ice, sleet, weather, flood, rain, drought, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, explosions (other than

steam boiler), sprinkler leakage, and general automobile and vehicle insurance, while casualty insurance companies organized under the laws of states other than the State of Illinois, foreign unincorporated associations, Lloyds, foreign mutuals, reciprocals and other associations of individuals, constituting foreign insurers and doing business in the State of Illinois, in direct competition with appel-[fol. 499] lant in the business of insuring against the foregoing hazards, were and are not subject to a tax on the net receipts derived by such other insurers from such hazards.

5. That the Supreme Court of the State of Illinois failed to follow and misunderstood the rulings of this Court in Hanover Fire Insurance Company v. Harding, 272 U. S. 494.

6. That appellant's net receipts derived from risks other than fire, marine and inland navigation insurance were not taxable under Section 30 of the Act of 1869.

7. That the tax levied against appellant for the year 1927 on appellant's net receipts pursuant to an assessment made by the Board of Review, and the judgment sought to be enforced thereunder was and is repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States, in that it deprived the appellant of its property without due process of law, by reason of the fact that the Board of Review of Cook County delegated to one, Herman B. Seeley, the determination of the amount of the net receipts of the appellant for the year 1927, and adopted without further consideration the amount so calculated by said Seeley, who by reason of contracts theretofore entered into with the taxing bodies of which contracts he was one of the beneficiaries, had a direct financial interest in the proceeds of any tax levied and assessed against the appellant, the extent of said interest being a percentage of the amount of such tax as might be assessed and collected.

8. That the tax levied for the year 1927 on appellant's net receipts, pursuant to an assessment made by the Board of Review, and the judgment sought to be enforced there-[fols. 500 & 500a] under, was and is repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States, in that it denied to the appellant the equal protection of the laws, in that the Board of Review

of Cook County in the assessment of taxes upon all other personal property for the year 1927, uniformly, systematically, and deliberately valued such property at only sixty per cent of its true, actual, full value, whereas the Board of Review in making its assessments against the net receipts of the appellant did not take sixty per cent of the true, actual, full value thereof, but assessed said net receipts at one hundred per cent of their value, instead of at sixty per cent, as all other personal property was assessed.

9. That the tax levied for the year 1927 on appellant's net receipts, pursuant to an assessment made by the Board of Review in 1928, and the judgment sought to be enforced thereunder, was and is repugnant to Section 1 of the Fourteenth Article of Amendment to the Constitution of the United States, in that a prior assessment had been levied upon the identical net receipts so assessed in 1928 by the Board of Review of Cook County; that taxes had been extended upon such prior assessment against the appellant, and that liability for the payment of such prior tax so extended remains of record against the appellant; that the net receipts assessed in the year 1928 were the same and identical net receipts theretofore assessed and extended as aforesaid; that the assessment so made in 1928 for the year 1927 was null and void, in that it subjected appellant to double taxation on the same property, and the judgment sought to be enforced thereunder constitutes a deprivation of the property of the appellant without due process of law, and a denial to the appellant of the equal protection of the laws.

Frederick D. Silber, Counsel for Appellant.

[fol. 500b] [File endorsement omitted.]

[fol. 501] IN SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO PRINTING RECORD—Filed March 18, 1933

It is hereby stipulated and agreed by and between the parties to the above entitled cause, by their respective counsel, that the Clerk of this Court, when printing the transcript of the record, shall print the following portions of the record only:

1. Placita of the Supreme Court of Illinois and of the Circuit Court of Cook County, Record pages 1, 2 and 3.

2. Plaintiff's declaration, Record pages 4, 5 and 6.

3. Order of the Circuit Court, Record page 19.

4. Finding and judgment of the Circuit Court of Cook County, Record pages 22 and 23.

5. Bill of exceptions. It is stipulated that in lieu of printing the bill of exceptions contained in the record proper, the Clerk shall print the abstract of the bill of exceptions accompanying this stipulation, which abstract of the bill of exceptions is contained in said printed ab- [fol. 502] stract of the record from page 6, beginning with the words "Abstract of the bill of exceptions", to page 197, closing with the words "To the entry of which judgment plaintiffs then and there excepted", on said page 197, and in printing said abstract of the bill of exceptions the printed marginal pages referring to the original record in the Supreme Court of Illinois shall be omitted and the corrected marginal pages, referring to the record filed in the Supreme Court of the United States, shall be inserted.

6. Assignment of errors, Record pages 398 to 402.

7. Opinion of the Supreme Court of Illinois, Record pages 404 to 416.

8. Order of reversal and for judgment for $18,206.19, Record page 417.

9. Filing of petition for rehearing November 16th, 1932, Record page 418 (but such petition for rehearing is not to be printed).

10. Order denying petition for rehearing made December 9th, 1932, Record page 421.

11. Petition for appeal filed by appellant allowed and order allowing appeal and staying execution pending appeal, Record page 422.

12. Petition for appeal, Record page 423.

13. Order allowing appeal, Record page 425.

14. Order approving appeal bond and staying execution, [fol. 503] Record page 427.

15. Proof of service on Clerk of the Circuit Court of Cook County of order staying execution, Record page 429.

16. Assignment of errors and prayer for reversal of judgment, Record pages 432 to 437.

17. Bond for appeal, Record pages 439 to 444.

18. Statement sustaining jurisdiction of the Supreme Court of the United States, Record pages 445 to 465.

19. Proof of service of citation on appellee on February 9th, 1933, Record pages 468 and 469.

20. Notice by appellant to appellee of the allowance of appeal, approval of the appeal bond and the stay of execution and of Section 3 of Rule 12 of the Supreme Court of the United States, Record pages 473 and 474.

21. Statement of appellee making against jurisdiction of the Supreme Court of the United States, together with proof of service on counsel for appellant, Record pages 476 to 488.

22. Stipulation for preparation of transcript of the record for the Supreme Court of the United States, signed by counsel for the respective parties, Record pages 490 to 492.

[fols. 504 & 505] 23. Certificate of the Clerk of the Supreme Court of Illinois to the correctness of the transcript of the record, dated March 8th, 1933, Record page 494.

24. Certificate of the Clerk of the Supreme Court of Illinois as to the transmission of the duly certified transcript of portions of the record, as per stipulation of counsel incorporated therein, dated March 8th, 1933, Record page 495.

Frederick D. Silber, Counsel for Appellant. Thomas J. Courtney, Leon Hornstein, Louis H. Geiman, Harris F. Williams, Hiram T. Gilbert, Counsel for Appellee.

Dated Chicago, Illinois, March 15th, 1933.

[fol. 506] [File endorsement omitted.]

Endorsed on cover: File No. 37,487. Illinois Supreme Court. Term No. 790. Concordia Fire Insurance Company, appellant, vs. The People of the State of Illinois. Filed March 18, 1933. File No. 37,487.